



REPUBLIC OF KENYA



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Republic v Gori (Criminal Case 7 of 2018)
[2025] KEHC 2578 (KLR) (27 February 2025) (Judgment)

Neutral citation: [2025] KEHC 2578 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE 7 OF 2018
MS SHARIFF, J
FEBRUARY 27, 2025

BETWEEN

REPUBLIC PROSECUTION

AND

RICHARD AKOMBO GORI ACCUSED

JUDGMENT

1. The Accused herein Richard Akombo Gori has been charged with an offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars are that on the 13th and 14th of February 2018, at Kakmie Sub-Location in Nyando Sub- County within Kisumu County, jointly with others not before the Court murdered Kevin Odhiambo Odinga.
2. The Prosecution called four (4) witnesses in support of its case which was as follows: -
3. PW1 Margret Atieno Odinga testified that on 13th February 2018, at 9.30-10 p.m. she was in her house with a child known as Nancy Owuor when she saw some torch lights being illuminated towards her house. Some people started hitting the door and the roof and when she went and opened the door to investigate about what was happening She encountered Richard Akombo Gore, the accused person who hit her on her head using a cane and she inquired whether the witness had been harbouring the deceased for a whole year whilst the accused had been searching for him. This witness testified that the other persons in the company of the accused some of whom she recognized as Cliff, Mzee, Were and Joshua also joined in and started to beat Kevin and her up. That while inside the house cliff assaulted the deceased with a machete. The accused took out a rope from his jacket and tied up the hands of the deceased, which hands were clinging to the PW1's dera(Long dress). That at that point the accused and his accomplices push the witness thus causing her to fall down whereafter they cut up the part of the dera that the deceased had been holding onto using a machete and the assailants then dragged the deceased out of the house This witness testified that when she got up Nancy went and assisted her and they both went to Boya Police Station and lodged a report. She was escorted back to her home by the



police who assisted her to search for the deceased to no avail and the police returned to the station while she continued with the search while in the company of George Ouma and they found his body burnt to death near her home between some sisal plants. The deceased was laying on his stomach. PW1 told the Court that she knew the Accused since his young days. She was able to identify the Accused person using the security light of her co-wife's house, the accused was also carrying a torch and she was also able to recognize the voice of the Accused person.

4. On cross-examination, she told the Court that she could identify five of her assaulters and that she has neighbours but they left the house as they had disagreed. She told the Court that the Accused wore a maroon jacket and that during her attack the assaulters directed the torch light at her.
5. On re-examination, she told the Court that when she opened the door the first person she saw was one Clif and that Akombo held the door.
6. PW2 DR. Dickson Mchana testified that he is a consultant pathologist at Kakamega County and he covers the larger western region in forensic pathology services. According to him, he was in Court to present the autopsy report in respect to the deceased herein. On 2nd January 2019, at Ahero Sub-Conty Hospital mortuary he conducted a post-mortem examination on the body of the deceased in the presence of Sergeant Ruben Waithira. He observed inter alia; multiple bruises, grazes and lacerations involving the head, face, forearms and upper back, sizeable laceration across cut mid right chest, initiated burns inside the nostrils-1st and 2nd degree burns involving lower face and neck, front chest and upper belly, the back and variable areas of upper and lower limbs cumulating to 49% of the body surface. Internally he observed inter alia; ballooned lungs and presence of soot in the air ways, his stomach was distended with solid food with no alcoholic smell, extensive blood clot formation under the skull. He noted that the cause of death was extreme dry heat 49% and burns, and inhalation burns with external evidence of assault. He told the Court that he extracted specimen of a soft part of one rib and had the same handed over to the investigation officer for examination by a government chemist. He produced the post-mortem report dated 19th February 2018 in Court as PEXH. 4.
7. On cross-examination, he told the Court that he could not detect any flammable fluid on the body and that the injuries on the deceased's body were from a blunt object but could not testify to whether the assault was meted out by several people.
8. PW3 Richard Chemtai Langat testified that he is a government analyst based in Kisumu. He told the Court that on 20th February 2018 they were in receipt of police exhibits from Sergeant Ruben Wathaira for purposes of identifying the origin of blood stains on : a) one leg trousers in a transparent polythene bag marked L, b)a panga wrapped in a khaki envelope marked P, c) a cushion cover in a transparent polythene bag marked C, d) a curtain in a transparent bag marked W and e) a cartilage in a small centimeter marked M. After examination, they established that the samples marked as L, P, C and W were lightly stained with blood of human origin and that the DNA profiles generated from the items was that of the deceased herein. He produced in Court the government analyst report dated 17th May 2019 as PEXH.5 .
9. On cross examination, he told the Court that the exhibits submitted were five as listed in the report.
10. PW4 Ruben Wahuya testified that he is now stationed at Buruburu Police Station but he was previously attached to Boya Police Station. According to him, on 13th February 2018 while at Boya Police Station at 11.00 hours PW1 came to the station wherein she lodged a report of an invasion at her home. While in the company of his colleague they accompanied PW1 to her house and on arrival they found that the place had been ransacked and the deceased was nowhere in sight. They searched the house and area around it and later headed back to the station. The next day at 6.45 a.m. PW1 made



a further report that she had found the body of the deceased and it was partially burnt and lying dead about 400 meters from their homestead. She proceeded to the scene, collected the body to take it to the mortuary and commenced investigations. They revisited the house of PW1 where they saw spilt blood on the window curtains and cushion. She collected the two items and proceeded to the home of the individuals PW1 mentioned. At the house of the Accused person, they did not recover anything but at that on one Cliff they found a long trouser jean stained with blood and a blood stained panga. They apprehended the Accused person and took him to the police station. He produced in Court the blood-stained cushion marked as PEXH.1, the blood-stained curtain marked as PEXH.2, the blood long trouser jean marked as PEXH.3 and blood stained panga marked as PEXH.6. He told the Court that he conducted his investigations and wished to produce in Court an investigation diary marked as PEXH.7.

11. On cross-examination, he told the Court when PW1 came to the station to lodge her report she mentioned the Accused person herein and that on visiting his house they did not recover anything. He told the Court that they arrested the Accused person because they found a young girl in his house and that PW1 had positively identified him at the scene of crime.
12. After close of the Prosecution's case, the Court found that the Accused person herein had a case to answer. He was placed on his defense.
13. DW1 Richard Akombo Gori gave his sworn testimony on 30th May 2024. According to him, he denied killing the deceased. He told the Court that he knew the deceased very well for a period of about 20 years. He recalled on 13th February 2018, at around 9.00 p.m. he closed his shop and went home in the company of his elder brother. They arrived at 9.20 p.m. and he found his wife at home cooking. He told the Court that he had his supper and proceeded to bed until the following day. On 14th February 2018, he left his home at 5.30 a.m. heading to his shop only for the DCI to show up at his business premises at 9.00 a.m. telling him that a man was murdered and that he was involved in the incident. They picked him up and went with him to his home where they ransacked everything, and all this happened when his wife was not at home. He was later taken to Boya Police Station and charges preferred against him.
14. On cross examination, he told the Court that he knows PW1 as a neighbor and aunt and that on the date of the incident he was in his house. He denied going to the house of PW1.
15. PW2 Patrick Otieno Gori testified that he is the brother of the Accused person herein and that he knew the deceased as he used to reside in their area. According to him, on 13th February 2018 at 9.00 P.M. he went to buy sugar at DW1's shop and they later left together at about 9.15 p.m. with him accompanying him home. He told the Court that he left DW1's house at 9.20 p.m. and on 14th February 2018 at 9.30 p.m. he received a call informing him that they had seen the police searching DW1's house on suspicion that he had been involved in a murder of the deceased herein. He told the Court that the deceased was a known criminal who had on several occasions been apprehended and taken to Boya Police Station.
16. On cross-examination, he told the Court that they were at DW1's house by 9.15 p.m.
17. DW3 Tophisker Atieno Oyuma testified that she is the husband of the Accused person herein and that they have been married for 10 years. According to her, on 13th February 2018, at 9.30 p.m. or thereabout the Accused an DW2 arrived at their home while she was making supper and after eating he proceeded to sleep. The next day the Accused left for his shop and she proceeded to fetch water and later to the shamba. When done, she went home to find the door of her house wide open with everything scattered. As she tried to comprehend what was happening, her mother-in-law came and informed him that the Accused had been arrested on suspicion of murder.



18. On cross-examination, she told the Court that the Accused told her that nothing was recovered from his house and that she had seen the deceased in the neighborhood.
19. At the close of the defence hearing, the Court directed that submissions be filed and exchanged by the parties. Both parties complied.
20. I have duly considered the evidence tendered herein by the Prosecution and defence together with submissions filed. I find the issue for determination is whether the Prosecution has proved its case beyond reasonable doubt.
21. The offence of murder is prescribed under section 203 of the [Penal Code](#) thus; “Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
22. To secure a conviction for the offence therefore, the following ingredients ought to be established beyond reasonable doubt; (a) the death of the deceased and the cause of that death; (b) that the accused committed the unlawful act which caused the death of the deceased; (c) and that the accused persons had harboured malice aforethought.
23. Throughout a criminal trial, an Accused bears no duty to prove his innocence. The burden is on the prosecution to prove their case beyond reasonable doubt.
24. In *Stephen Nguli Mulili v Republic* [2014] eKLR this is what the Court had to say;

“...it is not in doubt that the burden of proof lies with the prosecution. The locus classicus on this is the case of *DPP V Woolmington*, (1935) UKHL 1 where the court eloquently stated that the “golden thread” in the “web of English common law” is that it is the duty of the prosecution to prove its case. The Kenyan Courts have upheld this position in numerous cases. See *Festus Mukati Murwa V R*, (2013) eKLR”
25. In the famous case of *Miller v Minister of Pensions* [1947] 2 ALL ER 372 Lord Denning stated with regard to the burden of proof of beyond reasonable doubt.

“That degree is well settled. It need not reach certainty but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to defeat the cause of justice. If the evidence is so strong against a man as to leave only remote possibility in his favour which can be dismissed with the sentence of course it is possible but not in the least probable, the case is proved beyond reasonable doubt, but nothing short of that shall suffice.”
26. In the Nigerian case of *Bakare v State* (1987) INNLR (PT 52) 579, the Supreme Court stated;

“Proof beyond reasonable doubt stems out of the compelling presumption of innocence inherent in our adversary system of criminal justice. To displace the presumption the evidence of the prosecution must prove beyond reasonable doubt that the person accused is guilty of the offence charged. Absolute certainty is impossible in any human adventure, including the administration of criminal justice. Proof beyond reasonable doubt means what it says. It does not admit of plausible possibilities but does admit of a high degree of cogency consistent with an equally high degree of probability.”



(a) the death of the deceased and the cause of that death

27. The fact of the deceased's death is not in question. To prove the cause of his death, the prosecution relied on a post mortem report produced by PW2. In the report, Dr. Dickson Mchana, indicated that the cause of death was due to extreme dry heat 49% and burns, and inhalation burns with external evidence of assault. I therefore, find that the Prosecution proved that the deceased died. In the circumstances, this court is convinced that this element of the charge was sufficiently proved by the Prosecution beyond any reasonable doubt.
28. The deceased herein was found to have died from extreme dry heat 49% and burns, and inhalation burns with external evidence of assault. As stated above, there is no doubt that the death of the deceased was caused by the injuries that he sustained on his body as was detailed in PEXH 4. There is no evidence showing that the injuries found on the body of the deceased were self-inflicted or that it was justified in any way under the law. Further evidence presented before Court irresistibly points to an unlawful act that led to the death of the deceased following an attack. Accordingly, I find and hold that the death of the deceased was caused by an unlawful Act.

(b) that the accused committed the unlawful act which caused the death of the deceased.

29. Regarding the second ingredient that the deceased's death was as a result of an unlawful act by the Accused, this Court must consider the manner in which the deceased was killed. According to PW1 the Accused was one of the assaulters that attacked them. It was her testimony that the Accused was the one that hit the deceased herein with a panga, tied him up with a rope and dragged him outside their house. The evidence against the Accused person is by a single witness i.e PW1 from her testimony it is clear that the identification was made at night after night fall.
30. In the case of Abdullah Bin Wendo vs. Rex 20 EACA 166, the Judges of Appeal emphasized the need for careful scrutiny of the evidence of identification especially by a single witness, before basing any conviction on it. The Court held as follows:

“Subject to certain well known exceptions it is trite law that a fact may be proved by a testimony of a single witness but this rule does not lessen the need for testing with the greatest care the evidence of a single witness respecting identification especially when it is known that the conditions favouring a correct identification were difficult. In such circumstances what is needed is other evidence, whether it be circumstantial or direct pointing to guilt from which a Judge or jury can reasonably conclude that the evidence of identification although based on the testimony of a single witness can safely be accepted as free from the possibility of error.”

31. I have considered the evidenced of PW1 the sole eye witness in this case. She recalled on 13th February 2018, at 10.10 p.m. while at her house unwell with the deceased who had decided to spend the night, she heard someone hitting the roof using a rungu. This prompted her to rise from her sleeping position and inquire from deceased on what exactly was happening. The people outside were hitting the door and the roof with a rungu and a panga. She opened the door and saw about 5 people that she could identify. They assaulted her until the deceased inquired why they were beating her up. The Accused person entered the house without a panga but he asked the other young man with him to hand over one to him. The Accused assaulted the deceased with the machete causing him to fall down on a seat bleeding. She told the Court that the Accused person wore a jacket with a rope. The others assaulted him as the Accused person used the rope he had to tie up the hands of the deceased. At this time the deceased had been holding onto the dera/long dress of the witness but the accused used the machete



to cut off the that part of the dress that the deceased was clinging to. The assailants then dragged the deceased out of the house while she PW1 remained behind. She told the Court that she knew the Accused very well and that she even recognized his voice and with the aid of security light of her co-wife's house and that because there was no moonlight he was able to recognize the voice of the Accused person. On cross-examination, she also mentioned that Accused wore a maroon jacket and that during her attack the assailants directed the torch light at her.

32. In the case of *Abel Maina Mburu v Republic* [2021] eKLR, the Court, E C MWITA, dealt with evidence of recognition as doth: -

“36. The of Court of Appeal appreciated, however, that evidence of a single identifying witness can still prove a fact in a criminal trial thus leading to a conviction. In *Ogeto v Republic* [2004] KLR 19, it was stated:

It is trite law that a fact can be proved by the evidence of a single witness although there is need to test with the greatest care the identification evidence of such a witness especially when it is shown that conditions favouring identification were difficult. Further, the Court has to bear in mind that it is possible for a witness to be honest but to be mistaken.

37. In *Roria v Republic* [1967] EA 583, the court warned on the dangers of convicting on the evidence of a single identifying witness, stating:

A conviction resting entirely on identity invariably causes a degree of uneasiness... That danger is, of course, greater when the only evidence against an accused person is identification by one witness and though no one would suggest that a conviction based on such identification should never be upheld it is the duty of this court to satisfy itself that in all circumstances it is safe to act on such identification.”

33. With regards to identification, PW1 testified that the Accused spent almost 1 hour at her house and while at her door she was able to recognize the Accused and other not before the Court with the aid of a torchlight and the security light that was on at her co-wife's house. Furthermore, she told the Court that she recognized the voice of the Accused herein as he knew him very well since his young days.

34. In *Mbelle vs. Republic* (1984) KLR 626 this Court held:

“In dealing with evidence of identification by voice, the court should ensure that: a) The voice was that of the accused. b) The witness was familiar with the voice and recognized it. c) The conditions obtaining at the time it was made were such that there was no mistake in testifying to what was said and who had said it.”

35. Further, this Court in *Vura Mwachi Rumbi vs. Republic* [2016] eKLR stated:

“In the case of *Choge v R* [1985] KLR 1, this Court held that evidence of voice identification is receivable and admissible and it can, depending on the circumstances, carry as much weight as visual identification. In receiving such evidence, however, care and caution should be exercised to ensure that the witness was familiar with the appellant's voice and recognized



it and that the conditions obtaining at the time the recognition made were such that there was no mistake in testifying to that which was said and who had said it...”

36. In *Karani vs. Republic* [1985] KLR 290 this Court held that:

“Identification by voice nearly always amounts to identification by recognition. Yet here as in any other cases care has to be taken to ensure that the voice was that of the appellant, that the complainant was familiar with the voice and that he recognized it and that there were conditions in existence favouring safe identification.”

37. It is established law that a conviction can be based on the testimony of a single-eye witness and there is no rule of law or evidence which says to the contrary provided the sole eye witness passed the test of reliability in basing conviction on his testimony alone. This a case of visual and voice recognition as I have closely examined evidence adduced in this case and found that of PW1 directly pointing to the guilt of the Accused person. I find that the identification of the Accused person by PW1 was safe.

(c) that the accused persons had harboured malice aforethought.

38. On whether the Accused person had malice aforethought when he unlawfully killed the deceased, under Section 206 of the *Penal Code*, malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances:

- “(a) An intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not.
- (b) Knowledge that the act or omission causing death will probably cause death or grievous harm to some person, whether that person is the person killed or not, accompanied by indifference whether death or grievous injury occurs or not or by a wish that it may not be caused.
- (c) an intention to commit a felony.
- (d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.”

39. The Prosecution has a duty to prove malice aforethought on any of the circumstances stated under Section 206 of the *Penal Code*. What can be deduced from section 206 (a-e), malice aforethought can be either direct or indirect depending on the peculiarity and facts of each case during the trial. The Courts in interpreting the provisions of Section 206 have stated as such in various authorities. In the classic case of *Republic v Tubere S/O Ochen* [1945] 12 EACA 63 the Court held that an inference of malice aforethought can be established by considering the nature of the weapon used, the part of the body targeted, the manner in which the weapon was used and the conduct of the accused before, during and after the attack.

40. In the instant case, evidence adduced by the Prosecution shows that the aim of the deceased’s attacker was clearly to cause grievous harm. This is further established by the evidence as delivered by PW1 who told the Court that, the Accused person hit the deceased with a machete and tied him up. He then proceeded to drag him out of the house and that was the last time she saw him alive. Further, the nature of injuries suffered by the deceased which were as follows: multiple bruises, grazes and lacerations involving the head, face, forearms and upper back, sizeable laceration across cut mid right chest, initiated burns inside the nostrils-1st and 2nd degree burns involving lower face and neck, front chest and upper belly, the back and variable areas of upper and lower limbs cumulating to 49% of the



body surface. Internally he observed inter alia; ballooned lungs and presence of soot in the air ways, his stomach was distended with solid food with no alcoholic smell, extensive blood clot formation under the skull.

41. An attack on one's head and the upper body in general is an attack on the life of a person. The Accused person had the ultimate intention of eliminating the deceased although the motive is unclear save that the Accused was at that moment angry with PW1 herein for allegedly hiding her son (Deceased) from the accused who had been searching for the deceased for one year. The mens rea has thus been proved.

42. However, the same Court stated in *Lubambula v R* [2003] KLR 683 that:

“Motive becomes an important element in the chain of presumptive proof and where the case rests on purely circumstantial evidence. Motive of course, may be drawn from the facts, though proof of it is not essential to prove a crime.”

43. PW1 testified that even after attacking the deceased and having him in a dire state of bleeding, the Accused person took the rope he had with him tied him up and dragged him out of the house with the aim of finishing him off. The accused person assaulted the deceased in the cruelest way.

44. When put on his defence, the Accused person raised an alibi defence by stating that he was not at the scene at the time of the attack on the deceased as he was with at home with his wife.

45. In the case of *Kiarie v R* {1984} KLR The Court of Appeal laid down the following principle:

“An alibi raises a specific defence and an accused person who puts an alibi as an answer to a charge does not in Law thereby assume any burden of proving that answer and it is sufficient if an alibi introduces into the mind of a court a doubt that is not unreasonable. The Judge had erred in accepting the trial Magistrate's finding on the alibi because the finding was not supported by any reasons.”

46. In *R v Sukha Singh S/o Wazer Singh & Others* {1939} 6 EACA 145 held:

“If a person is accused of anything and his defence is an alibi, he should bring forward that alibi as soon as he can because, firstly, if he does not bring it forward until months afterwards, there is naturally a doubt as to whether he has not been preparing it in the interval and secondly, if he brings it forward at the earliest possible moment it will give the prosecution an opportunity of inquiring into that alibi and if they are satisfied as to its genuineness, proceedings will be stopped.”

47. The governing principle on alibi defence is that a failure to disclose an alibi at a sufficiently early opportunity to permit it to be investigated by the police is a factor which may be considered in determining the weight given to it. See *Nyakundi J IN Charles Kasena Chogo v Republic* [2019] eKLR.

48. I have perused the trial Court record and I find that the Accused person only raised the alibi defence during his defence and the plea of alibi was never even part of the cross-examination. In *R v Mahoney* {1979} 50 CCC it was held:

“The governing principle on alibi defence is that a failure to disclose an alibi at a sufficiently early time to permit it to be investigated by the police is a factor which may be considered in determining the weight given to it.”



49. See Nyakundi J IN Charles Kasena Chogo v Republic [2019] eKLR.
50. Subject to the above, the Prosecution could not have started investigations during defence hearing. Had the Accused person disclosed his defence prior to the said defence hearing, the Prosecution would have investigated it.
51. In the end, I find and hold that the Prosecution has proved all the elements of the offence of murder against the Accused person beyond reasonable doubt.
52. Accordingly, I find the Accused person, Richard Akombo Gori, Guilty of the offence of murder as charged contrary to Section 203 of the [Penal Code](#). I convict him accordingly.
53. Sentence will be after records and mitigation.
54. Orders accordingly.

DATED AND DELIVERED AT BUNGOMA THIS 27TH DAY OF FEBRUARY 2025.

M.S.SHARIFF

JUDGE

In the presence of:

Accused

Ms Muema for the state

Ms Akinyi Odhiambo for the accused person.

Diana/David/Juma – Court Assistants

