



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Korir (Criminal Case 48 of 2015)
[2025] KEHC 1430 (KLR) (26 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1430 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 48 OF 2015
HI ONG'UDI, J
FEBRUARY 26, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

GEOFFREY KIMNGETICH KORIR ALIAS CHEMORTA ACCUSED

JUDGMENT

1. Geoffrey Kimngetich Korir alias Chemorta hereinafter referred to as the accused stands charged with the offence of murder contrary to section 203 as read with section 204 of the penal code. The particulars are that the accused on 8th March, 2015 at around 7.30pm at Emitok area in Kuresoi within Nakuru county murdered Samuel Rono alias fundi. He denied the charge and the case proceeded to full hearing with the prosecution calling seven witnesses and the defence calling two witnesses.
2. PW1 David Mutai Kipngeno who had employed the deceased as a herdsman was at his home in Chepteres village of Emitik location on 8th March, 2015. While there at around 7.30 pm he was visited by one Nicholas Laboso who reported to him that the deceased had been beaten and was on the road. He went to the road and found the deceased lying there. The deceased told him he had been beaten by a man he knew as “Chemorta” also known as Geoffrey Mutai who is the accused. The deceased was bleeding from the mouth and complained of pain in the stomach.
3. He refused to go home saying he wanted to follow Chemorta. Ten minutes later PW1 was called and he went and found the deceased who was drunk lying 30 meters from the previous scene. Together with Geoffrey Langat, Jackson and Saidi Kor they lifted the deceased and took him home.
4. The next day his condition worsened and PW1 took him to a local dispensary, then to Olenguruone hospital where he was admitted. The deceased passed on at night. A report was made at Olenguruone police station. The accused could not be traced at his place of work but was later arrested. Accused used to work as a herdsman for PW1’s neighbour, Mzee Keroch, who never testified.



5. In cross examination he said the deceased used to be a cobbler at the shops but PW1 had employed him as herdsman for two (2) months. He confirmed that the deceased used to drink heavily, and he was drunk and injured on the material day. He could not tell if the accused fell down due to drunkenness.
6. PW2 Geoffrey Kones Langat worked as a Scout with Kenya Forest Service. He stated that on 8th March, 2015 he was escorting his friend Bett (PW4) to the centre when he met the deceased lying on the road while crying in pain. He said “Chemorta” the accused had hit him on the stomach and ran away. He tried to trace the accused in vain. He went back to the scene and found PW1 having arrived, and he assisted him take the deceased home. The deceased ate and went to sleep. PW2 confirmed seeing blood trickling from the deceased’s nose.
7. In cross examination he said the deceased appeared drunk when he saw him. That he told him the accused had hit him on the stomach. He was with Bett, Noah, Kirui and Robert when the deceased said he had been hit on the stomach by the accused.
8. PW3 – Noah Kipkoech Kirui stated that on 9th March, 2015 at 9.00am he went to work when he found the deceased at Chiptebes. The deceased told him he had fought with the accused and he asked him to take him to hospital which he did. He was admitted at Olenguruone hospital and PW3 left him there. He knew both accused and deceased. In cross examination he said PW1 did not request him to take the deceased to hospital.
9. PW4 Jackson Bett testified that on 8th March, 2015 at 7.00pm he had visited his friend (PW2). As he was being escorted by PW2 they found one “Fundi” lying by the roadside and complaining of pain after being beaten by “Chemorta”. They tried to trace Chemorta in vain. He knew ‘Chemorta’ and his other name was Geoffrey. Later he learnt of ‘Fundis’ death.
10. PW5 No. 67260104 Richard Maina formerly of Olenguruone police station was the investigating officer in this case. He established that one “Chemorta” had kicked the deceased in the stomach and run away. The deceased died at Olenguruone hospital where he had been taken. He recorded witness statements and visited the scene of the fight. He witnessed the autopsy at Molo hospital. He did not establish why the accused kicked the deceased.
11. PW6 Nicholas Korir testified that on 8th March, 2015 at 7.30pm one “Fundi” came to him and sent him to call Mutai. Fundi told him nothing. He further said Fundi told him he had been beaten by Chemorta. He did not know where Chemorta was and he did not see him before the court. He did not know the meaning of Chemorta.
12. PW7 Dr. Francis Ndathi Kiplang produced the post mortem report by Dr. Njoroge dated 20th March, 2015 as EXB 1. The cause of death was blunt injury causing haemorrhage in the pelvis. The injury was caused by a blunt object.
13. In cross examination he said the bladder can rupture due to other causes including a fall. Though the post mortem was done after eleven (11) days that would not change the conclusion of the cause of death. He added that the history given showed he had been hit blows and kicks.
14. The accused in his unsworn defence denied being Geoffrey Mutai, nor Chemorta. He stated that on 8th March, 2015 he was at his home in Bomet at Kibyosit where he does farming. He had leased land in Olenguruone. He denied knowing the deceased. He was arrested at Legatich of Olenguruone by members of the public on allegations of killing the deceased. He was then taken to Olenguruone police station where he recorded a statement under inquiry after being asked questions. The statement was produced by consent of the prosecution and defence as DEXB 1.



15. On the request of the defence the OCS Olenguruone was summoned by the court to produce the accused's I.D card and statement under inquiry. He testified as DW1 No. 233150 Chief Inspector Stephen Nduva. He explained that the incident occurred in 2014 and he went to the station as an OCS on 9th September, 2021. That he has done what he could but has not been able to get the police file in respect of this matter or the accused's ID card.
16. He stated that when suspects are transferred to remand or court they are given all their properties including identity cards. And in case of anything a report is placed in the O.B. It was his evidence that he has never handled the accused's case since the police file was never handed to him. That the O.B for 2015 is not in the station. He only saw the accused names as Geoffrey Kipkorir alias Chemorta in the summons. He produced the copy of the accused's statement under inquiry as DEXB 1.
17. Both parties filed written submissions to the case.

Prosecution's submissions

18. These were filed by M/s Emma Okok principal prosecution counsel and are dated 16th January, 2025. Counsel reiterated the contents of their earlier submissions on case to answer dated 5th May, 2023. Referring to the defence by the accused counsel submitted that the same is an afterthought and a mere denial. That PW1, PW2, PW3 and PW4 knew the accused as Geoffrey Mutai alias Chemorta. They may not have known his official names, but when the deceased told them he had been assaulted by "Chemorta" they knew who it was. That the dying declaration was therefore watertight. Counsel dismissed the defence by the accused as weak and requested the court to discard it.

Accused's submissions

19. The same were filed by Mr. Wambeyi for the accused and are dated 29th November, 2024. Counsel did a summary of the evidence by the prosecution and the defence. He framed four (4) issues for determination. On who caused the death of the deceased, counsel submitted that the deceased died but no one witnessed the killing. That even Nicholas who gave PW1 the information on what happened never testified. Secondly that PW2 dispelled the fact that indeed PW1 ever visited the scene. He urged the court to disregard PW1's entire evidence.
20. Counsel in reference to PW3 said his evidence was not clear on where and how the accused and deceased fought. So, his evidence is not reliable. On PW4's evidence he argued that the witness was never identified as having been at the scene by any of the other witnesses. He thus submitted that that no specific cause of death had been identified nor the person who caused the death. That the cause of death may have been a fall as suggested by the doctor. He thus concluded that all that was stated was mere suspicion which cannot form the basis of a conviction.
21. On the defence, counsel submitted that there is a clear error on the identity of who actually perpetrated the act complained of. He wondered whether the perpetrator was "Geoffrey Kimngetch Korir alias Chemorta" as per the information, or was it Geoffrey "Mutai" the accused before court or "Geoffrey Kipngetch Korir". Counsel wondered why police records in respect of the accused had gone missing. He wondered what was being hidden.
22. He submitted that the accused's proper names are Geoffrey Kipngetch Mutai and not the names in the information. That since the O.C.S failed to avail the accused's identity card, which would have resolved the issue the court should resolve the matter in the accused's favour.
23. Counsel further submitted that all that the witnesses were told was the deceased fought and was beaten by one "Chemorta" Nothing more was added to this. He further argued that these statements did not



qualify as a dying declaration under section 33 of the Evidence Act. That the deceased was too drunk to do anything. He relied on the case of Chengo Nickson Kalama V Republic [2015] eKLR in support.

24. Finally, counsel submitted that the accused's defence remained unshaken and asked the court to set him free.

Analysis and determination

25. I have carefully considered the entire evidence on record, both parties' submissions, case law and the law. Murder is defined under section 203 of the penal code which provides that:

“ Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder”

The punishment for murder, is set out in section 204 of the penal code as follows:

“ Any person convicted of murder shall be sentenced to death”

26. For a charge of murder to be proved the following ingredients must be proved: The death of the deceased and the cause of death That the accused committed the unlawful act which caused the deceased's death (actus rea). That in committing the unlawful act the accused had malice aforethought (mens rea).
27. Before I get into analysing, the main ingredients for proof of a murder charge there are a few issues that have been raised by the defence which need to be addressed. The first one is about the names of the accused. From the record the information dated 8th July, 2015 was presented to this court on the same date. The accused in the said information is shown to be Geoffrey Mutai. Plea was taken on 20th July, 2015 with Mr. Wambeyi appearing for the accused.
28. On 9th of September, 2015 the prosecution in the absence of the defence counsel requested for substitution of the information. The court directed that the issue of substitution of the charge/ information and bail application would be argued on 22nd September, 2015 since counsel for the accused was absent.
29. The new charge/ information had been filed on 20th July, 2015. The record shows that the same was read out to the accused on 4th February, 2016 just before the hearing kicked off. The names of the accused read as Geoffrey Kimng'etich Korir alias Chemorta. At this point no issue was raised concerning names and through out the entire hearing. Even as late as 14th February, 2024 the accused in his defence gave his names as Geoffrey Kipng'etich Korir and not Geoffrey Kipng'etich Mutai as submitted. He denied being Geoffrey Mutai though the said names had long been amended in the substituted information.
30. There is also the issue of the accused's original I.D card having been retained at Olenguruone police station. The investigating officer (PW5) testified here on 16th March, 2017 which was just two (2) years after the incident. The issue of names and/or I.D card was never put to him. The defence never asked the court for the two (2) years the case was ongoing to summon the OCS Olenguruone to produce the original I.D card and original statement under inquiry even for their own records.
31. The witness who appeared here in obedience to the court summons on 14th October, 2024 said he could not locate the original of the statement under inquiry (DEXB1) nor accused's I.D card. It was his further evidence that suspects are usually given back any personal effects once they leave the police station for court or prison remand. The accused was last at Olenguruone police station on 8th July, 2015 when he was brought to the court. Raising those issues almost nine (9) years down the line is not



being fair to the police and especially considering the fact that the accused has been represented by the same law firm from the start of the case, upto now.

32. On the first issue of proof of death and its cause, PW1 – PW4 confirmed the death and there is no issue about that. PW1 and one Jonathan Mutai identified the body for post-mortem. The report by Dr. Njoroge and produced by Dr. Ndathi (EXB1) confirmed the cause of death to have been a blunt injury causing bleeding in the pelvis. The weapon used was a blunt object. It is therefore clear that the deceased did not die out of a natural cause.
33. The next issue for determination is whether it is the accused who caused the injuries that led to the deceased's death. The record is clear that no eye witness testified before this court as to what really happened to the deceased. The deceased was injured on 8th March, 2019, 7.30pm and he died the next day ie. 9th March, 2019 around 10.00pm while in hospital.
34. PW6 said the deceased approached him and sent him to call Mutai. This was on 8th March, 2019. That though he did not tell him anything he told him he had been beaten by Chemorta. He did not tell the court the condition the deceased was in, where they were meeting and whether he called Mutai as requested. His evidence is therefore of no assistance to the court.
35. PW3 claimed to have taken the deceased to Olenguruone hospital on 9th March, 2015. PW1 had told the court that it was him and others ("we") who took the deceased to Olenguruone hospital. So, which is which? Was it PW1 or PW3 who took the deceased to hospital?
36. According to PW1, PW2 and PW4, they found the deceased lying on the road. PW1 and PW2 confirmed that the deceased was drunk as he lay on the road. It is not stated whether the place where they found the deceased was a public road or a footpath. They found him there at around 7.30pm so it was at night. The question coming to the court's mind is how the deceased in his drunken state was able to identify "Chemorta" as the person who had injured him. Was there any source of light at the scene? None of the witnesses mentioned that. Nicholas Laboso who reported to PW1 about the beating of the deceased never testified, in this matter. Nobody knows what he actually saw or witnessed, since he never shared with PW1.
37. With the few loopholes pointed out the evidence of PW1, PW2 and PW4 which is admissible as dying declarations under section 33 of the Evidence must be treated/handled with a lot of caution. In the case of Achira V Republic [2003] KLR 707 the Court of Appeal held thus:
 - (3) The court should approach the evidence of a dying declaration with necessary circumspection.
 - (4) It is generally speaking unsafe to base a conviction solely on the dying declaration of a deceased person made in the absence of an accused and not subject to cross examination unless there is satisfactory corroboration.
 - (5) The trial judge erred in finding that the uncorroborated accomplice evidence could corroborate the deceased's dying declaration.
38. In the instant case the conditions under which the deceased may have seen and identified the assailant are not very clear and it was at night. Had Nicholas Laboso testified there would have been some clarity on this. The court must be certain of the truthfulness of what the deceased told PW1, PW2 and PW4 before wholly relying on it as a dying declaration.
39. PW5 the investigating officer told the court he visited the scene where the accused and deceased had fought. Unfortunately, he never presented any evidence before this court to confirm that indeed there was any fight between the two. He appeared not even sure of the accused's name yet he was



the investigating officer. He never mentioned to court anything about the statement under inquiry (DEXB1) taken by the late Chief Inspector Opudo. This statement (DEXB1) is of no value to this court since it was never signed by both the accused and whoever recorded it.

40. This being a criminal case the burden fell on the prosecution to prove its case beyond reasonable doubt. My finding is that, the said burden has not been discharged.
41. The upshot is that the charge against accused had not been proved to the required standard. I find him not guilty and acquit him under section 322(1) of the *Criminal Procedure Code*. The accused will be released unless otherwise held under a separate warrant.
42. Orders accordingly.

DELIVERED, DATED AND SIGNED THIS 26TH DAY OF FEBRUARY, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

