



**Republic v Chiding (Criminal Case E001 of 2022)
[2025] KEHC 4547 (KLR) (28 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 4547 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPENGURIA
CRIMINAL CASE E001 OF 2022
RPV WENDOH, J
MARCH 28, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

SAMUEL CHIDING ACCUSED

JUDGMENT

- 1 Samuel Chiding Aru alias Kiyele faces a charge of murder contrary to section 203 as read with section 204 of the [Penal Code](#).
- 2 The particulars of the charge are that on the night of 24/12/2021 at Seretwo village in Kipkomo sub-county, West Pokot, murdered Chemarisao Chepkite Aru alias Komnangat Aru.
- 3 The accused denied committing the offence and the case proceeded to full trial with the prosecution calling a total of nine (9) witnesses. The accused was placed on his defence and gave sworn evidence.
- 4 He did not call any other witness.
- 5 This case was partially heard by Judge Korir who took the evidence of seven (7) witnesses while the rest were taken by this court. The prosecution was led by Mr. Makori and later Mr. Majale while the accused was represented by Ms. Sugut Advocate.
- 6 PW1 Joshua Kibet is a child aged eleven (11) years, who gave evidence on oath. PW1 recalled that in December 2021, he was at his grandmother’s house at Murpur where he lived. The grandmother was Komnangat. He was with Abednego PW2; that at about 2.00.a.m., the grandmother went to relieve herself outside. They heard her scream, then she entered the house and pushed back the door but somebody was pushing it in from outside; when the person who was outside was about to enter, he took an iron pipe for blowing fire and hit the person on the head and the person retreated; that the house started burning from outside as they pushed the door with the grandmother so that they could



- get out but could not open because it was locked from outside; PW1 said that they stepped on sacks of maize that were in the house, over the wall, hit the roof of the grass thatched house, removed the grass and got out but their grandmother remained in the burning house. After they came out, he saw Kiely, a brother to his father, outside the burning house and that he was armed with a panga, bow and arrows.
- 7 PW1 said he was able to see Kiely using the moonlight and light from the burning house; that they jumped into the cow shed and ran to the house of Chebumbur and from there, Kerong took them to another house. PW1 stated that Kiely lived far away from the grandmother.
- 8 PW2 Abednego Musto remembered December, 2021 when he was living with PW1 and the grandmother Komnangat. He stated that about 4.00a.m., his grandmother was outside the house when she was pierced on the belly button, screamed and entered the house; that Kiely followed her, pushed the door but PW1 hit him with a metal pipe and he retreated and set the house on fire. They started suffocating. They stepped on bags of maize and managed to jump out through the roof but their grandmother remained in the house. They ran to where Dan was and that Kiely raised the panga to cut them. They were able to see because of the moon and light from the fire. They spent the night at somebody's house and when they came back next morning, they found that house had been burnt. In cross examination he said he was able to see Kiely through the holes on the wall; that they found Dan near his house and he wanted to shoot Kiely with the bow and arrows.
- 9 PW3 Mary Samuel did not testify because of an objection raised under section 127 of the *Evidence Act*.
- 10 PW4 Jackson Cheruiyot recalled that on 24/12/2021, he was asleep in the house and next day, his brother Peter Chamir informed him that his mother had been beaten and burnt. He proceeded to the scene and confirmed it. As he asked for his children who lived with the mother, the accused arrived and the children said he is the one who burnt the house, Police arrested him. PW4 later identified the body at Kapenguria County Referral Hospital mortuary; that accused had disagreed with the mother since 2019 when the deceased sold land and asked accused to buy for her a motor cycle and he bought a second hand one and the mother was not happy; that later, accused claimed that the motor cycle was his. The issue had been reported to the Chief and police at Ortum and the police determined that the motorcycle belonged to the mother.
- 11 PW5 Dr. Nyunyuny Dan, a Medical Officer at Kapenguria County Referral Hospital conducted the post mortem on the deceased on 31/12/2021. He found that the body was 100% burnt and badly mutilated with a few lacerations on the scalp; cuts on the right shoulder, a stab wound on the anterior abdominal wall, the respiratory system had inhalation injury. He formed the opinion that cause of death was lack of air due to inhalation injury as a result of 100% burns.
- 12 PW6 Joseph Leriso, the Assistant Chief of Murpus Sub location received a report from Joseph Namering that the house of the deceased was on fire and she was crying for help, He told Joseph to go to her rescue but he called to inform PW6 that he could not see the lady and the hut was completely burnt down. PW6 sent Joseph to get three other men to go and look for Kiely and arrest him; that Joseph and the other people who had not responded by 6.00.a.m. He went to the home and found the deceased was burnt beyond recognition and the house had burned. He called the OCS Ortum Police Station and reported. He met young men had arrested Kiely, He interrogated the boys who lived with the deceased who said accused went there at night called the deceased, she opened and he shot her. He also interrogated the brother of deceased's son who lived nearby.
- 13 PW7 Joseph Losiakou recalled that on 23/12/2021, a Thursday, he had gone for Pokot traditional dance together with Dan. He spent the night at Dan's house and at 2.00.a.m, he heard the mother raise alarm. He came out and when near the store, he saw the house on fire. He saw a person emerge from the house with a panga bow and arrow which he put down. He went back to dress as Dan got his bow



- and arrow. He saw children come out of the house on top of the door and he took them to sleep at the house of one Loripo. He went back next morning only to find people gathered and he said the person he saw leave the deceased's house was Chiding whom he knew well and he walked with a slight limp. PW7 said he was able to see Chiding because of the light from the fire.
- 14 PW8 PC Steven Ouma of Ortum Police Station recalled the 24/12/2021 when him and other police officers were sent to a murder scene at Lorutha village where a lady had been burnt to death in her grass thatched house. They found people at the scene and secured it. DCI officers from Kapenguria arrived and took over investigations. He saw the accused amongst those present at the scene.
- 15 PW9 Cpl. George Wamae of DCI West Pokot was assigned the case relating to the deceased order on 24/12/2021. He proceeded to the scene where they found a burnt hut and the burnt body of the deceased. He received information from Joshua and Abednego (PW1 & 2) that the deceased was attacked with arrows when she went outside the house for a call, that she managed to run back to the house and was followed to the house. The three managed to lock the door from inside; that through a hole in the wall they saw accused retreat but came back and set the house on fire, following which the two boys managed to climb out of the house using sacks of maize but the deceased was unable to escape. PW9 also interrogated Joseph Lusiakou who responded to the distress cries of deceased. He found out that the nature of attack to be a dispute over a motorcycle which the deceased bought through accused after sale of land, that accused was to do "boda boda" with the motor cycle and remit money to deceased but he failed. The dispute was resolved by police and accused was forced to move away from home to another land far away, in 2020.
- 16 At the deceased's home, PW9 recovered four (4) partially burnt arrows, bow, (Exh.3 & 4), the burnt body and took accused from the police officers who had detained him.
- 17 Accused testified as (DW1). In his sworn defence he denied murdering his mother. He recalled the 24/12/2021 he was at his house in Lotikou when his neighbour informed him that he had received a call from Sereton that accused's mother's house had been burnt and she had been killed. He left with his wife and one David to go to Sereton which is an hour's walk from Lokitou. At the gate, one Joseph Nameri, his mother's brother, examined to see if any had an injury to the head. This is because it had been alleged that the one who burnt the house had been injured on the head and had a scar. He entered the house, found the mother's house burnt but did not go near. Police asked people to help take the body to the mortuary and he offered. After the body was delivered at the mortuary, he was told that he was the suspect and was taken to the police station and charged for this offence; that his brother Jackson who named him as a suspect has a dispute with him over land. He denied ever having a dispute with the mother. He claimed to have been at his home on the night of 24th December.
- 18 In a criminal charge like the one the accused faces, the burden of proof lies on the prosecution to prove its case beyond reasonable doubt. The standard of proof of 'beyond reasonable doubt' was discussed by the English court in the celebrated case of Woolmington – DPP (1935) UKHL.1 "Throughout the web of the English Law, one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt..... if, at the end of and on the whole of the case, there is reasonable doubt, created by the evidence given by either the prosecution or the prisoner, the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained".



19 In Miller -V- Ministry of Pensions (1947) ALL ER 372, Lord Denning defined ‘beyond reasonable’ doubt as follows; -

“The degree is settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The Law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a 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 will suffice”.

20 It is now the duty of this court to consider the evidence tendered by the prosecution to determine whether the prosecution has proved beyond reasonable doubt the following;

1. The death of the deceased;
2. That the accused caused the death of the deceased through an unlawful act or omission;
3. That the accused possessed malice aforethought.

Death of the deceased.

21 The death of the deceased is not in dispute. The testimonies of PW1,2,4,6,7,8 and 9 was not disputed by the accused. The deceased’s body was found in her house that was burnt down. PW5 performed the post mortem, witnessed by PW4. PW5 found that the deceased died due to lack of air due to inhalation injury which also corroborated the other prosecution evidence. PW5 evidence also corroborated PW1 and 2’s testimonies in which they said the deceased was also injured by the attacker. Before the house was set ablaze.

Whether the accused caused the death; -

22 From the testimonies of PW1,2,6 and 7 this incident occurred deep in the night. The times given were between 2.00a.m. and 4.00a.m. The key question here is whether the witnesses were able to identify the assailant because the conditions under which the witnesses identified the assailant were not favourable. Such evidence has to be tested with the greatest care and must be water tight to avoid mistaking the identity of one. In the case of Wamunga -V- Republic (1989) KLR 424 the Court of Appeal held as follows regarding identification in difficult conditions: “Evidence of visual identification in criminal cases can bring about miscarriages of justice and it is of vital importance that such evidence is examined carefully to minimize the danger. Whenever the case against a defendant depends wholly or to a greater extent on the correctness of one or more identifications of the accused, which he alleges to be mistaken, the court must warn itself of the special need for caution before convicting the defendant in reliance on the correctness of the identification. It is trite law that where the only evidence against a defendant is evidence of identification or recognition, a trial court is enjoined to examine such evidence carefully and to be satisfied that the circumstances of identification were favourable and free from possibility of error before it can safely make it the basis of a conviction.....”

23 In the instant case, it is the duty of this court to examine closely the evidence of PW1, 2 and 7 who were at the scene on the said night, to establish whether it is reliable and free from error. In this case, the three witnesses PW1,2, and 7 testified to having recognized the accused at the scene. In R.V Turnbull (1976) 3 ALL ER 549 at page 552 the court said.



- 24 Recognition may be more reliable than identification of a stranger; but even when the witness is properly purporting to recognize someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made”.
- 25 PW1 told the court that he was able to see the accused using moonlight and the light from the burning house. It means he saw accused after the house was set ablaze. It was not clear whether he saw the accused while still in the house or only at the time they were fleeing and accused allegedly tried to cut them. It was not disclosed how far or close the assailant was from PW1 and therefore whether the witness was able to see the attacker well.
- 26 PW2 on the other hand claimed to have seen the accused through a hole on the wall and the light from the moon and the burning house.
- 27 Again, it was not disclosed how far apart they were and exactly at what stage he saw the assailant. Much as PW1 and 2 told the court that they clearly saw their uncle, the accused whom they knew very well, it was surprising that during cross examination, it emerged they had not mentioned the accused as the assailant when recording their statements with the police.
- 28 In cross examination, PW1 stated “I recorded a statement with the police. I saw Kiely at the door. That is what I told the police. He had a panga and a bow and arrows. I did not see him attack grandmother with weapons. He is the one who shot grandmother with the arrow. I did not indicate that fact in my statement”
- 29 PW2 on his part said “I recorded a statement with the police our grandmother told us Kiely shot her with an arrow.” court witness referred to his statement to police) It says grandmother said unknown person shot her with an arrow. She told me Kiely shot her; there were holes in the wall of the house. I could see him. I told the police. There are holes in the house. I do not know why the police did not record this. Kiely tried cutting us with the panga as we ran away. I do not know why the police did not record this”.
- 30 It is not clear exactly when PW1 and 2 recorded their statements with the police but when they recorded them, the facts were still fresh in their minds and questions linger in the court’s mind why such important facts would not be captured in their statements to police. As respects PW7 who came to the scene in response to the screams and helped take PW1 and 2 to safety, he said “I recorded a statement with police, I saw Chiding emerge from the house. I told police and they recorded what I told them. A police officer recorded the statement for me (court- witness statement to the police read to him). I saw Chiding emerge from the house although my statement does not specifically state so”
- 31 It is unclear how the Investigating Officer PW9 claimed to have arrested the accused based on what PW 1,2 & 7 told him, yet that was not captured in the statements recorded by him or his officers. Failure by the key witnesses to identify the assailant in their statements to police raises doubts in the court’s mind as to whether the witnesses identified/recognized the assailant. Courts have held that a first report to the police or a person in authority is very crucial in such a case, because by the time of making the report, the incident is still fresh and has not been influenced by other factors to suit one’s circumstances. The importance of a first report was considered in the case of Kioko Kilonzo & others -V- Republic Criminal A 82-85 (2011) in which the Court of Appeal referred to the case of Terekali -V- Republic (1952) EACA where the court said “..... Evidence of a first report, by the complaint to a person in authority is important as it often provides a good test by which the truth and accuracy of subsequent may be gauged and provides a safeguard against later embellishment or made-up case. Truth will always come out in a first statement taken from a witness at a time when recollection is very fresh and there has been no time for consultation with others....”



- 32 After a careful consideration of PW1, 2 and 7's testimonies the court is not satisfied that identification of accused as the assailant was full proof.
- 33 There is overwhelming evidence on record that accused was on bad terms with the deceased, his mother and he had been harassing her over a motor cycle. The issue had been referred to the police for resolution. Even PW6 the area Assistant Chief was aware of it and mentioned the accused having beaten the mother there before. This bad blood between accused and deceased made him the first and prime suspect and that may have been the basis for his arrest.
- It may also have been reason for him to murder his mother.
- 34 I found it curious that one Dan, Accused's brother, who was present at the scene and who allegedly armed himself and engaged the assailant, did not come to testify. The court was told that he was in hiding, avoiding to come to court. One wonders why, yet the deceased was his mother. Might his evidence have been averse to the prosecution evidence? The said Dan's evidence was very crucial to this case and failure to call him leaves a gap in the prosecution case.
- 35 In the end, I find that the accused is indeed a prime suspect in this case but the evidence of recognition was too weak to found a basis for a conviction. Suspicion however strong can never be a basis for a conviction. I do not think it necessary to consider the issue of malice aforethought.
- 36 For the above reasons, I find that the charge of murder is not proved beyond reasonable doubt. The accused is given the benefit of doubt and acquitted.

DELIVERED, DATED AND SIGNED AT KAPENGURIA THIS 28TH DAY OF MARCH, 2025

R. WENDOHO.

JUDGE.

Judgment delivered in Open Court in the presence of; -

Mr. Majale for the State

Mr. Lowasikou holding brief for Ms. Sugut for Accused

Accused – present

Juma/Hellen - Court Assistants

