



**Republic v Yeko (Criminal Case E007 of 2023)
[2025] KEHC 4067 (KLR) (28 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 4067 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPENGURIA**

CRIMINAL CASE E007 OF 2023

RPV WENDOH, J

MARCH 28, 2025

BETWEEN

REPUBLIC PROSECUTOR

AND

ISAAC YEKO ACCUSED

JUDGMENT

1. The accused Isaac Yeko 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 1/11/2023 at Sigor area Korellach Sub Location, murdered Mariam Cheptoo Barut.
3. The accused denied the charge and the case proceeded to full trial with the prosecution calling a total of eight witness.
4. The accused gave a sworn defence but did not call any other witnesses.
5. The prosecution Counsel was Mr. Majale while the accused was represented by Mr. Lowasikou Advocate.
6. PW1 Janet Chemakit, a business lady at Sigor testified that she used to sell changaa. On 31/10/2023, about 11.00p.m., she was selling changaa at her home and was in company of Alexander Chuma, Bono when they were joined by the deceased, (Mariam); that after a short while, Polen, Mariam’s husband arrived; that Polen talked to Mariam and asked her to go home with him, but she refused to go with him and they started to quarrel; that both ordered changaa and drunk. Meanwhile, Mariam moved from where she was seated to where PW1 was; that Polen followed Mariam and hit her on the back with a shoe several times and left.



7. After that PW1, Alexander, Bono and Mariam went to PW1's house and Polen returned after about thirty (30) minutes and continued to ask Mariam to go home but she refused stating that if they went together, he would kill her; that PW1 and Mariam slept while Alexander and Bono were seated; that when Mariam declined to go with Polen, Polen went and crouched near Mariam and hit her on the left side and she screamed once. They realised that Polen had stabbed Mariam because she was bleeding from her left side. She asked one Kemoi to get a motor cycle to take Mariam to Hospital Kemoi came back and informed her that Mariam had died and she went to see the body at the Hospital. PW1 identified accused as Polen whom she had known by that name for over one (1) year.
8. PW1 used to sell changaa to Polen. She knew him as husband to Mariam and they had one child. PW1 did not see the weapon Polen used to stab Mariam. PW1 identified Accused as Polen.
9. PW2 Allan Kibet of Sigor recalled 31/10/2023, he was at Maisha Kamili with Alexander Kipchumba, and Mariam; that Polen, Mariam's husband joined them and started beating Mariam with Akala shoes (shoes made from tyres) and people intervened; that Polen left and returned after 30 minutes after they had entered the house; that Polen asked Mariam to go home with him but she refused claiming that he would kill her if she went with him; that suddenly Polen went where Mariam was lying, told her that if she did not want to go with him she would die and he stabbed her but he did not see the weapon used; that they looked for a rider and took Mariam to hospital where they were informed she had died. PW2 identified accused as Isaac also known as Polen.
10. PW3 Alexander Chumba also testified that, to being with Allan Kibet (PW2) Janet (PW1) and Mariam (deceased) on 31/10/2023 when the accused came there, called Mariam aside, they talked and started to quarrel; that accused beat Mariam with an 'akala' (tyre) shoe on the back and head and they intervened; that accused wanted Mariam to go home but she refused claiming that he would kill her; that there was a drizzle and him PW1,2 and Mariam entered PW1's house; that Mariam and Janet lay down while him and Allan sat on a bench; that accused came back, sat near the ladies, bent down and told Mariam that if she did not want to go, she would die; that Mariam screamed once and could not talk. Accused ran away and they got a motor cycle to take Mariam to hospital. Soon after they got information that Mariam had died and they went and confirmed it at the hospital.
11. PW4 Brigid Chenangat is a sister to accused. She testified that on 1/11/2023, a Doctor called her about 11.45p.m. and informed her that her sister-in-law had died after a fight with her husband. She looked for accused with police and found him asleep in his house. She took him to the police station. She identified a knife without a handle as the one the police found in accused's house.
12. PW5 DR. John Kipkoskei Chirchir conducted the post mortem on the deceased's body on 2/11/2023, at Kapenguria County Referral hospital, On examining the body, he found a stab wound on the left side of the abdomen just below the chest, and the stomach was distended. On opening the body, he found three (3) liters of blood in the abdomen; that the stab wound went through the stomach and front side of the spleen. He found the cause of death to be severe bleeding secondary to a stab wound in the anterior abdomen.
13. PW6 Bramwel Pkemoi testified that on 31/10/2023, about 11,00p.m., he was on his way home when he heard cries of help emanating from a house where changaa was sold. He went to find out what was going on and found Mariam who was a friend, lying on the floor groaning in pain. He got help and they took her to hospital on a motor cycle; that she died on arrival in hospital. He noticed that the deceased was injured near the breast. PW6 identified the accused as his uncle.
14. PW7 Stella Cherop of Sigor Sub-County Hospital was on duty on 1/11/2023 about 12.30a.m. when a patient was taken there by three riders. On examining the patient identified as Mariam, she found her



with a blood-stained t-shirt and a hole on the left side of the t-shirt. On lifting the t-shirt she found a stab wound on the left hypochondriac region below the heart; that she was unresponsive and efforts to resuscitate her were unsuccessful. PW7 did not smell any alcohol on deceased.

15. PW8 PC Evans Randu of DCI was the Investigating Officer in this case. After being informed of the death on 1/11/2023, he proceeded to Sigor sub-County hospital where he was shown the body of the deceased Mariam who had a stab wound on the lower abdomen. He visited accused's house with Brigid Chelangat and other police Officers and they recovered a knife which had no handle under accused's bed but it had no blood stains. Accused had been taken to police station by members of the public including the sister. He witnessed the post mortem that was conducted at Kapenguria County Referral hospital. He took accused for mental assessment and he was found fit to stand trial.
16. The accused person was placed on his defence and was called upon to defend himself. He opted to give a sworn statement. He denied knowing what happened on 1/11/2023. He recalled that Mariam was his wife of six (6) years and they had a child. He denied knowing how she died. He denied knowing Janet.
17. The accused faces a criminal charge and the standard of proof in criminal cases is 'beyond reasonable doubt'. The term "beyond reasonable doubt" was discussed by the court in Woolmington -V- DPP (1935) when it said "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".
18. In Miller -V- Ministry of Pensions (1947) ALL ER 372, Lord Denning defined the term '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".
19. In the instant case, the prosecution has the duty to prove 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:

20. There is overwhelming evidence on record that Mariam Cheptoo Barut died on 31/10/2023. The testimonies of PW1,2,3,4,5,6,7 all saw the deceased's body at Sigor County Hospital soon after her death.
21. PW7 attended to the deceased at the Hospital just before she breathed her last. PW5 performed post mortem on the deceased's body and found a stab wound on the left side of the abdomen just below



the chest and the cut went through the stomach and front part of the spleen. He found three (3) liters of blood in the abdomen and found the cause of death to be severe

Whether the accused caused the death;

22. The testimonies of PW1, 2, 3 are corroborated in all material particulars. They were with the deceased when she disagreed with the accused after he asked her to go home and refused and later, he suddenly attacked her in their presence. The court finds their testimonies to be consistent and cogent. They knew both accused and deceased for a long time. Infact, all of them referred to accused as Polen, his alias name PW4 accused's sister confirmed that Polen is Accused's alias name.
23. PW1,2,3, the accused and the deceased had been together in PW1's house for some time on the evening of 31/10/2023. Even though the incident occurred about 11.30p.m., the court was told that there were solar lights in PW1's house and they had conversed for a long time before the incident occurred.
24. Each of the witnesses PW1, 2 & 3 recalled how the accused struck the deceased once after she refused to go home with him, that she only screamed once, urinated and did not talk again. By the time the deceased reached the hospital, the deceased was unresponsive. I find the evidence of PW1, 2 and 3 cogent and uncontroverted. They placed the accused at the scene and he was properly identified. Besides, the report made to PW4, and 6, soon after the incident, was that it is accused who had committed the offence. In his defence accused generally denied knowing how the wife died. The defence was hollow. However, I find that there is overwhelming evidence on record that he is the one who stabbed the deceased which act led her to bleed to death.

Whether accused had malice aforethought;

25. Malice aforethought refers to the accused intention under Section 206 of the [Penal Code](#). The said section provides as follows;-

Malice aforethought

- (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 the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;
 - (c) an intent 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.
26. In the case of R.V Juma Mwarabu Chari alias Juma Kazungu & another (2022) eKLR the court stated this, the test of malice aforethought is to be properly understood in so far as the evidence of the prosecution presents and manifests the following circumstances;
 - a. The nature of the weapon used;
 - b. How it was used, the manner used to inflict the injuries;
 - c. The part of the body injured;
 - d. Conduct of the assailants before, during and immediately after the injuries were inflicted.



See also Republic -V- Tubere s/o Ochen (1945) 12 EALA 63.

27. In the instant case, the accused first left the deceased with PW1, 2 and 3 after she refused to go with him, went and armed himself with a sharp object and came and thrust the sharp object into the deceased, most probably the knife found in house, right through the stomach of the deceased as a result of which she screamed once and never uttered a word again.
27. By the time she reached Hospital, she was already dead. The stab wound cut through the stomach and front side of the spleen. The weapon used, the amount of force used and the part of the body at which accused aimed at were meant to cause grievous harm to the deceased or cause her death. There is no doubt that accused had malice aforethought and I find that the same has been proved beyond reasonable doubt.
28. In the end, I find that the prosecution has proved beyond reasonable doubt that it is the accused who murdered his wife, Mariam Cheptoo. I find him guilty of the charge of Murder and convict him accordingly.

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

R. WENDOH.

JUDGE.

Judgment delivered in Open Court in the presence of;-

Mr. Majale for the State

Mr. Lowasikou for Accused

Accused – present

Juma/Hellen - Court Assistants

