



REPUBLIC OF KENYA



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**Republic v Lokipuna & another (Criminal Case 3 of 2020)
[2025] KEHC 3827 (KLR) (26 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3827 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPENGURIA
CRIMINAL CASE 3 OF 2020
RPV WENDOH, J
MARCH 26, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

LABAN LOKIPUNA 1ST ACCUSED

BONIFACE SIFUNA 2ND ACCUSED

JUDGMENT

1. By an information dated 24/2/2020, the accused, Laban Lokipuna and Boniface Sifuna were jointly charged with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#).
2. The particulars of the charge are that on 27/12/2019, at Kishaunet Location, West Pokot County, the two accused jointly murdered Arupe Rengetiang.
3. Both the accused denied committing the offence. The matter proceeded to full hearing with the prosecution calling a total of seven (7) witnesses. After close of the prosecution case, both accused were called upon to defend themselves and both accused gave their evidence on oath. They did not call any other witnesses.
4. The Prosecution was led by Mr. Majale. Accused 1 was represented by Mr. Lowasikou while Accused 2 was represented by Ms. Opondo.
5. Irene Chemerkew (PW1) is the wife to PW2 Kevin Kiplimo Saisi both residents of Kishaunet. PW1 recalled that she knew Laban (Accused 1) as a neighbour and his wife Arupe Rengetiang (deceased). She recalled that on 27/12/2019, she was at the home of Cheri, her sister-in-Law, (PW3) together with Kevin alias Damari, Arupe and Laban and were taking Changaa. They drunk Changaa from about Midday till dark. They later left together, Laban, Kevin, Arupe and went to sleep at Laban's house; that Laban shared his bed with his wife Arupe, while PW1 and 2 slept on the floor; that in the morning



the accused told them that Arupe had gone back to the bar and he followed her and found her dancing with Muchinja and that he had beaten Muchinja. PW1 felt thirsty and wanted water, but accused informed him that the solar lights were not working. It is then she heard Arupe breathing strangely and the accused explained that they fell in water when returning home; PW1 touched Arupe and the body was cold and she could not talk. After drinking water, PW1 and the husband (PW2) left; that Accused warned them not to talk about Arupe's strange breathing. On reaching home, at about 7.00a.m. they decided to go back to check on Arupe, but met accused with four other people. They then went to Cheri's place; that she called accused to enquire about Arupe and he informed her that Arupe left to go to her aunt's home. PW1 received information that Muchinja was injured and saw him seriously injured and she reported to the village elder (Mukasa) that the Accused had talked of having injured Muchinja. PW1 later learnt that Arupe was found buried outside accused's house but she did not go where the body was found. PW1 denied not knowing accused 2.

6. PW2 Kevin Kiplimo Saisi knew both accused and even the deceased. He recalled that on 27/12/2019, he left Kapenguria about 11.00a.m. and on reaching home, he went to take Changaa at Rosemary's place and later at 4.00p.m. went to Cheri's place where he found his wife (PW1) and Arupe, also taking Changaa; Accused 1 joined them about 7.00p.m. and they continued to drink till about 9.00p.m. Later, they went to Accused's house where Accused and Arupe slept on the bed while PW1 and PW2 slept on the floor; that about 5.00a.m., PW2 heard Arupe whizzing and PW1 enquired what was wrong with Arupe; that the accused told them how Arupe had left to go dancing, he followed her and found her dancing with Muchinja and he beat up Muchinja; that accused explained that maybe Arupe was whizzing because he found her in water; PW1 and 2 left Arupe still breathing loudly but not able to talk. Later at 7.00a.m. PW1 and 2 decided to go back to check on Arupe but they met accused from whom they enquired and he told them that Arupe had woken up and left for the aunt's home. He went and found that indeed Muchinja was injured and he reported to the village elder what Accused had told him; that he beat up Muchinja. Later, he learnt that accused had killed the wife, Arupe.
7. PW3 Nelly Chepchirchir Biwott alias Cheri stated that she sells changaa and knows both Accused. that on 27/12/2019, Arupe (Mama Rotich) went to her house with PW1 (Irene), that Damani or Kevin (PW2) also joined them and accused was also present as he used to work for her; that they all left together; that next morning about 5 to 6.00a.m., accused went to her house to ask for a jembe alleging he was to work elsewhere; that the jembe was brought back to her at 11.00a.m. Later, she learnt that Muchinja had been injured and she went and saw him; that later the village elder with Arupe's father called her and accused was present. She was asked if she had seen Arupe and it is then Accused said she had visited her aunt; and that accused sneaked away. Later, she heard people talking at Accused's house and went there and found that Arupe's body had been buried next to a banana stem but accused had disappeared. She denied seeing Accused 2 on 27/12/2019.
8. PW4, Simon Rengetiang Lenyamoi is the father of Arupe and father-in-law to Accused 1. He recalled that he received a call on 28/12/2019 from a village elder called Muren, informing him that Arupe could not be found after she fought with Accused 1 He proceeded to Kishaunet, found the village elder and Chief who informed him that the Accused 1 and Arupe had quarreled the previous night and a man who was also involved in the quarrel was seriously injured but Arupe could not be traced. PW4 reported to Kapenguria police station. He then learnt that Arupe's body had been found buried. He saw the body at Kapenguria mortuary and it had an injury to the stomach; that he had talked to Accused 1 at Kishaunet asking about Arupe's whereabouts but accused became wild and denied knowing her.
9. PW5 Jackline Chemeiwon of Kishaunet recalled that on 28/12/2019, at about 5.00a.m., accused woke her up and asked to be assisted with a jembe. Her husband told her not to open the door but she identified accused1 from his voice.



10. PW6 Henry Muri Lutudo, is a village elder at Kishaunet. On 28/12/2019, he went to Kishaunet trading centre and found people gathered. He was told that Kakuno Dawana alias Muchinja had been assaulted by Laban (accused 1) the previous night, was injured and had been taken to Kapenguria Referral Hospital; that Accused 1 had found the said Muchinja with his wife in a bar; that Accused 1 was present and he asked Accused's if that was true but he denied assaulting Muchinja and said that his wife had gone home several weeks earlier; that one Kevin Limo (PW2) arrived and informed him that he had been with Accused1 and the wife earlier. It is then PW6 called the Chief and Arupe's father. They proceeded to Accused's home with the Chief and KPR. They found a freshly dug and covered hole next to Accused's house and a banana had been planted thereon. Police were called, uprooted the banana and removed Arupe's body; that by then Accused had disappeared.
11. PW7 PC Wilfred Githombe of DCI West Pokot was the Investigating Officer in this matter. He received a report of a missing person on 28/12/2019 from Simon and entered it in the O.B; that the person went missing on 27/12/2019. He gathered information from the witnesses who had been with Accused 1 and deceased, PW1,2,3, and those who visited the deceased's home where they found the deceased's body buried in a grave next to Accused's house; that Accused escaped till his arrest on 11/2/2020. PW7 was present during the post mortem and he produced the post mortem report as P.Exh.2; That Accused 1 named Accused 2 as the one who assisted him and led to his arrest.
12. Accused1 (DW1) testified on oath that before arrest, he was a farmer and on 27/12/2019, he was arrested while transporting potatoes from Lelan to Makutano. It was for alleged he killed his wife Arupe. He denied it. He admitted that Arupe was his wife but they had separated for one month after a disagreement. He discounted PW1 and 2's evidence as untrue.
13. DW2 Boniface Sifuna (Accused 2) denied committing the offence. He stated that he used to slaughter goats and that on 27/12/2019 he was at work and went home. Next day on his way to work, he learnt that the person who locked the slaughterhouse had been beaten and was told to hurry. He found Muchinja had been injured and Muchinja told him that Accused 1 had assaulted him at night. Next day, he heard that Accused 1 had killed his wife. He denied having been involved in the murder and in any case, none of the witnesses mentioned him as having been involved.
14. Despite the defence Counsel having been allowed over two months to file closing submissions, by the time of writing this Judgment, none have been filed. The prosecution Counsel had indicated that he was not going to file any submissions.
15. The accused person faces a charge of Murder contrary to section 203 as read with section 204 of the *Penal Code*. This being a criminal charge, the prosecution bears the duty to prove its case beyond reasonable doubt. The standard of proof of beyond reasonable doubt was discussed by the English court in the celebrated decision of Woolmington -V- DPP (1935) UKHL 1. Where the court 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”.



16. 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”.

17. In this 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 of the deceased;

18. There is overwhelming evidence that Arupe Rengetiang is deceased. PW4, Arupe’s father did see the deceased’s body at Kapenguria mortuary on 28/12/2019, the day the body was taken there. PW6, the village elder was present when the deceased’s body was removed from the hole in which the body had been buried next to accused’s house on 28/12/2019. PW7, the Investigating officer was present when the post mortem was carried out and he produced the post mortem as P.Exh.2. By consent the Counsel agreed that it was unnecessary to call the Doctor who performed the post mortem. In the post mortem, the Doctor found that the deceased suffered the following injuries;- generalized body bruises; 2 cut wounds on the head on the left parietal bone, 1 X 5 cm long which went through the scalp, that the second wound was 4 cm long; open fracture of the lower third of the right tibia/ fibula bones; fracture the left distal ulna bone. The Doctor formed the opinion that the cause of death was acute severe haemorrhage (internal abdominal) as well as external, from the open fracture and cut wounds due to blunt and sharp force trauma. There is no doubt that the deceased died, not from natural causes, but from injuries inflicted on her, by somebody.

Whether the accused caused the death (deceased’s);

19. Nobody witnessed the incident where the deceased was fatally injured. The prosecution case therefore turns on circumstantial evidence. The Court of Appeal in the case of *Abang’a alias Onyango -V- Republic CR.A. 32/1990* set out the tests to be met in order to rely on circumstantial evidence. The court said as follows;

“It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests:

- (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established,
- (ii) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;



- (iii) the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.”

20. The Supreme Court of Uganda in *Kalunde Semakula -V- Uganda* UR Appeal 11 of 1994, observed as follows;-

“Another requirement concerning circumstantial evidence is that it must be narrowly examined, because evidence of this kind may be fabricated to cause suspicion on another. It is therefore necessary before drawing the inference of the accused’s guilt from circumstantial evidence, to be sure that there are no other co-existing circumstance which would weaken or destroy the inference”.

21. In the case of *Republic -v- Taylor Weaver & Donovan* (1928) 21 CR. Div. 20, the court observed that circumstantial evidence is the best evidence to found a conviction.
22. The court said “Circumstantial evidence is very often the best evidence of surrounding circumstances which by intensified examination, is capable of proving the preposition with the accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial”.
23. Bearing in mind the principles set out in the decisions considered above, I proceed to examine the veracity of the circumstantial evidence tendered.
24. In the instant case, PW1,2 and 3 placed the accused 1 and his deceased wife Arupe, at the home of PW3 on 27/12/2019 as they engaged in drinking changaa. Thereafter, PW1 and 2’s evidence placed Accused1 and the deceased at the deceased’s house on the same night where the four of them spent the night. Their evidence is so corroborated in all material particulars that I have no doubt that the three witnesses told the court the truth. PW1 and 2 stated that after taking changaa at PW3’s house, PW1,2 Accused 1 and deceased proceeded to Accused1’s house where PW1 and PW2 slept on the floor while Accused 1 and deceased slept on the bed. PW1 and 2 were later woken up with the weird breathing by the deceased that made them enquire from Accused 1 what had happened to the deceased. By then, the deceased was unable to talk and PW1 saw an injury on the deceased’s stomach. This court is satisfied that Accused1 was with his wife, the deceased on 27/12/2019 and they slept in the same bed in their house. PW1, 2 and 3’s account of the events of 27/12/2019 discounts the Accused 1’s defence that he had been separated from her for a month and he did not see her that day.
25. According to PW1 and PW2, on hearing the deceased breathing in a weird manner i.e whizzing, accused 1 informed them that the deceased had gone back to Kishaunet to dance at night and, that accused 1 found her dancing with one Muchinja whom he assaulted. The next day PW1 and 2 confirmed that Muchinja had indeed been seriously injured. All the witnesses who testified confirmed that Muchinja had received injuries to the face, could not talk and PW6 admitted that it is PW2 who informed him that it is accused 1 who had assaulted the said Muchinja over his wife. Before Accused 1 told him, PW2 had not known that the said Muchinja had been assaulted. Though the said Muchinja was not called as a witness, there is overwhelming evidence that he was found injured and it is Accused 1 who had revealed to PW2 that he injured him because accused 1 found him dancing with the deceased. Although accused 1 claimed that the deceased had left for her home, her body was found buried next to his house in a freshly dug hole and a banana planted over it. It is not just a coincidence that accused 1 had borrowed a jembe from PW4 and 5 on the same morning about 5.00a.m. It must be the jembe that was used to dig the grave in which the deceased was buried.



26. PW1 and 2 had left accused 1 with the deceased in bed but when they went back to enquire about the deceased at about 7.00 a.m. Accused 1 told them, that the deceased had left for her aunt's home. Accused 1 told PW3,4 and 6 the same story. Their testimonies were very consistent. Accused 1 was the last person to be seen in company of the deceased by PW1 and 2. Her body was found a few hours later buried in a hole next to his house. The law is clear that the burden of proof always rests on the prosecution to prove their case against the accused beyond reasonable doubt. No duty or burden is placed on the accused 1 to prove his innocence. However, there are instances when the law places a duty on the accused to explain certain facts particularly those peculiarly within his knowledge. Section 111(1)A of the *Evidence Act* rests the burden of proof on the accused and provides as follows- Section 111.(1) Burden on accused in certain cases
1. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any exception or exemption from, or qualification to, the operation of the law creating the offence with which he is charged and the burden of proving any fact especially within the knowledge of such person is upon him: Provided that such burden shall be deemed to be discharged if the court is satisfied by evidence given by the prosecution, whether in cross-examination or otherwise, that such circumstances or facts exist:

Provided further that the person accused shall be entitled to be acquitted of the offence with which he is charged if the court is satisfied that the evidence given by either the prosecution or the defense creates a reasonable doubt as to the guilt of the accused person in respect of that offence.”
27. Since the Accused 1 was the last one seen in bed with the deceased, he had the duty to explain what happened to her which duty he did not discharge. His defence was a mere denial and is not believable.

Whether malice aforethought was proved.

28. Section 206 of the *Penal Code* defines Malice aforethought as follows;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 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.
29. In Republic -V- Tubere s/o Ochen (1945) 12 EACA 63, the Eastern Court of Appeal observed
- “In determining existence or non existence of Malice, one has to look at the facts proving the weapon used, the manner in which it used, and part of the body injured”.
30. In the end, I find that it is accused who was last seen with the deceased and the circumstantial evidence on record unerringly points at the accused1 as the killer. The vicious cut wounds and fractures inflicted on the head and body of the deceased leave no doubt that they were intended to cause grievous harm



or death of the deceased. In addition, the accused's conduct of trying to conceal the deceased's body by burying the body and planting a banana plant on it, points to malice aforethought.

31. I find that the injuries inflicted on the deceased and Accused's conduct were done with malice aforethought.
32. As regards Accused 2, there is not a scintilla of evidence against him. He is hereby acquitted of the charge of murder under Section 322 of the *Penal Code*.
33. As respects Accused 1, I find him guilty of the murder of Arupe Rengetiang and convict him accordingly.

DELIVERED, DATED AND SIGNED AT KAPENGURIA THIS 26TH DAY OF MARCH, 2025

R. WENDOH.

JUDGE.

Judgment delivered in Open Court in the presence of:-

Mr. Majale for the State

Mr. Ndinyo holding brief for Mr. Lowasikou for Accused 1

Miss Opondo for Accused 2

Accused 1 & 2 – present

Juma/Hellen - Court Assistants

