



**Republic v Chemjor (Criminal Case E013 of 2023)  
[2025] KEHC 5489 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5489 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL CASE E013 OF 2023  
RB NGETICH, J  
APRIL 30, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**SILAS BARCHIBA CHEMJOR ..... ACCUSED**

**JUDGMENT**

1. The accused Silas Barchiba Chemjor has been charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#). The particulars of the charge were that the accused person on the 30<sup>th</sup> day of May, 2023 at Matingot village of Kaptich Sub-location in Baringo Central Sub-county within Baringo County, murdered Florence Kibor. The accused denied the charge and the matter was set down for full trial with the prosecution summoning a total of 6 witnesses in support of the charge preferred against the accused.

**Prosecution Evidence**

2. PW1 Lucy Chepkemboi testified that on 29<sup>th</sup> May, 2023 at 10.p.m. she was in her house with her husband when Alex knocked on the door and called her. She inquired what was wrong and he requested PW1 to go assist him see his mother Tarkok. On reaching Alex's home, she found that the mother had diarrhoead. PW1 went to call her friend in her house and went back with her. They asked Alex to stay out as they cleaned the mother and placed her to lie down on a mattress. She said after laying her down, she requested for water. She said they saw a bleeding wound on her left thigh after removing her clothes. They tied the wound using her Leso to prevent more bleeding and covered her with a blanket.
3. She said before they left, the deceased requested for water. They tried giving her but she could not take. She said that they also tried giving her milk but she was not able to take. They left her at midnight with Alex who was about 18 years. They instructed him to call them in case of an emergency.



4. PW1 testified that at 6:00 a.m., a woman called Mama Chiri went and informed her that Tarkok had overslept. She asked PW1 to accompany her to wake up Tarkok but PW1 requested her to go ahead but before she followed her, Mama Chiri went to inform her that Tarkok had died. She said the accused was a husband to Tarkok and that she did not see him when Alex called her and that the accused lived in a separate house in the compound. She said they inquired from Alex where his father was and he said that he was drunk and had slept. She said the accused was in the compound at the time she was informed that Tarkok had died.
5. PW2 Vivian Chepngetich Keitany on the 29<sup>th</sup> May 2023, she was in her house with her two children when she heard noises from Silas Barchiba's house. She said Barchiba's wife called Tarkok was screaming saying, "help me". She said she did not take any step because both Tarkok and Barchiba used to drink and fight and she took the screams as usual. She said at around 10:00 p.m., PW1 went to inform her that Alex a son to Barchiba had gone to wake her. She said they went to Barchiba's house and they changed her soiled clothes as she had vomited and diarrhoea and they saw a wound on her thigh which had little blood. They then asked Alex to stay with his mother as they went back to their houses and in the morning, they learnt that they deceased had died.
6. PW3 Alex Chebet Barchiba a minor aged 14 years testified that on the 29<sup>th</sup> May 2023, at around 9:00 p.m., he was from school and on arriving home, he entered into his mother's (Florence Kibor) house and found her on the bed and saw blood on the bed and her mother's leg. He said that he changed from school clothes in his room then went to where his mother was. He opened the door and woke her mother up but she did not wake up. He talked to her but she could not hear what she was saying.
7. He said that his mother turned on the bed, fell and diarrhoea. He went to call a neighbour to change her clothes. He said he could see blood on the clothes but he could not see where she was injured. He said he went to call a neighbor PW1 who went to call PW2 and they both went to his home and changed his mother's clothes. He said PW1 showed him a mark on the deceased's leg. He said around midnight, his mother called him requesting for his help three times then kept quiet and at 4 a.m., his father went and turned her. He said he asked his father to leave as he was the only one he had left behind with the deceased as he went to school. He remained with the mother until when his Aunt Mama Chiri went and requested him to go out and light fire to cook tea. He said that she inquired who was with him at night and he informed her that it was PW1 and PW2 and she went to call pw1. They entered the house and left. Shortly after, his father arrived with police and entered the house.
8. PW4 Dr. Wangare Wambugu a pathologist at Baringo County referral Hospital did postmortem on Florence Kibor on 27<sup>th</sup> June, 2023 at Baringo County Referral Hospital mortuary upon request by the D.C.I, Kabarnet. She said the body was identified by John Arap Chemjor and Aron Chepserson Kibor. She formed an opinion that the cause of death was massive bleeding into the pelvic area due to both sharp and blunt trauma following assault. She signed the post mortem report on the 27<sup>th</sup> June, 2023 which she produced as Exhibit 1 in court.
9. PW5 Aron Chepserson Kibor testified that on 27<sup>th</sup> June, 2023 he went to Baringo County Hospital mortuary to identify the body of his deceased sister Florence Kibor to the doctor for postmortem examination.
10. PW6 No. 241306 I.P. Okeyo Lameck testified that on the 3<sup>rd</sup> May, 2023 at around 1430 hours, he received a mobile call from IP Rioba who requested him to go to the station and accompany him to attend a scene of murder at Sacho. He said he rushed to the station from Kabarnet Town and upon arrival, he found IP Rioba in company of P.C Ngeno and Sgt. Driver Ngetich. He said they proceeded together to Sacho Police Station and on arrival, they met two officers who were recording statements of some witnesses. They introduced themselves to them and after that he led them outside the office to



the cells where the suspects were. The OCS briefed them of what had transpired and the action he had taken and the information he had received was that accused had gone to report the demise of his wife. He said they went to the scene and found the body of the deceased lying on a mattress on the floor. They processed the scene after which they proceeded to do a search in the house of the suspect. They received one bow, 2 arrows, one blood stained jumper blue in colour with black strips on the shoulder, a piece of stick which had blood stains.

11. He said that they took the exhibits and the body of the deceased and placed it in their motor vehicle and proceeded back to Sacho Police station where they collected the suspect and proceeded to Kabarnet Police Station and the body was taken to Baringo Referral Hospital Morgue pending autopsy. He said that on the 31<sup>st</sup> May, 2023 through Miscellaneous Application No.E003 of 2023, the court granted him 14 days to carry out investigations and on 12<sup>th</sup> June 2023, an autopsy was conducted on the body of the deceased in the presence of two of her relatives who positively identified the body to the doctor who performed the autopsy.
12. He said that the pathologist concluded that the cause of death was due to massive bleeding in the retroperic space due to blunt force/sharp force trauma following an assault. The witness was stood down and recalled on the 11<sup>th</sup> April, 2024 where he proceeded with his testimony and produced the exhibits which were photographs taken during processing of the scene. He said that he forwarded 13 photographs which he produced in court as exhibits. He said he handed over the photographs to P.C Ngeny on the 20<sup>th</sup> July, 2023 and he handed over the case before Government chemist to confirm whether the bow and arrows were used but he was informed that they could not be traced as there were several exhibits and they could not tell which ones were for this case.
13. Upon the closure of the prosecution case, by ruling delivered on the 9<sup>th</sup> May 2024, the court found that a prima facie case had been established to warrant accused be placed on his defence.

#### **Accused's Defence Case**

14. The accused in his defence gave sworn statement. He denied the charge of killing his wife the deceased Florence Kibor on 30<sup>th</sup> May 2023. He said on 29<sup>th</sup> May 2023, he and the deceased woke up well and planned work for the day where she was to weed onions and he was to take cattle to the field. He said he left her washing utensils and found her still washing utensil and went to the shopping centre to sell timber and he was paid Kshs.200/=. He said he purchased meat and went to posho mill then went home at 11:00 a.m. and found his wife in the farm and she informed her that he had paid for flour.
15. He then went to Kiptagich center for casual work where he was informed that there was a vehicle about to arrive with sand and he waited so as to offload sand. They stayed up to 3:00 p.m. then he went for his phone and found his spouse/deceased seated outside and he instructed her to give water to a cow and went back to center and waited up to 5:00 p.m. when they were told to go back in the morning. He went back home to see a goat which had delivered. He said that his wife had not arrived and he decided to go to the farm to remove weed and grass which had been cut and while outside, he heard his wife's voice where the cattle were and he went to where she was. He said he saw her limping and he inquired from her what happened and she said she was trying to drive the cattle to another direction and she fell and she was bleeding from her thigh. He said that he did not see the place she was injured as it was close to her private parts.
16. He said that he saw a bruise on the thigh (on the side) and they went home. He said that she supported herself with a walking stick as they went and upon reaching home, she cleaned the wound with water from a basin which was outside. He said he went to the farm then went for cattle and the goats and to the kitchen to cook, leaving the deceased sleeping. He said at 7:00 p.m. he went to posho mill for maize



flour and went back home and continued cooking. He said he went to tell the deceased that he forgot to bring pain killer and she said she had taken pain killers.

17. The accused said he continued cooking and at 9:00 p.m. when his son Alex arrived, he instructed him to take food to her mother as he went to girl's room, ate then relaxed. He asked for forgiveness for not forcing his wife to go to hospital as she was drunk. He said that he went to check her at night, called her but she did not respond. At 5:00 a.m. he went to wake his son to go to school. He instructed his son to wake up to make tea then he woke his wife to check how she was but she did not respond. He said he opened the door and saw her sleeping in a mattress, he uncovered her and realized she had died.
18. The accused said he did not hear the women who had gone to see the deceased at night. That he did not hear any of witness say the deceased informed them what caused the injury and the deceased did not mention him as having caused her death. He denied causing the death of the deceased and said that he only did not force her to go to hospital and he seeks for forgiveness from the court. He said they were not fighting as she would have reported him to police or chief if they were fighting.

### **Analysis And Determination**

19. The ingredients for the offence of murder from its definition under Section 203 of the [Penal Code](#) are as follows:-
  - a. Proof of death, the cause of that death,
  - b. Proof that the death was due to an unlawful act or omission, that the unlawful act or omission was on the part of the suspect and
  - c. That the unlawful killing was with malice aforethought.

### **Proof of death**

20. PW1, PW2 and PW3 confirmed that the deceased died at her home: PW4 Dr. Wangare Wambugu testified that the deceased's death was as a result of massive bleeding into the pelvic area due to both sharp and blunt force trauma following assault. She produced the report as exhibit 1 in court. There is therefore no doubt that the deceased died.

### **Proof that the death was due to an unlawful act or omission, that the unlawful act or omission was on the part of the suspect and**

21. As to whether the deceased met her death as a result of an unlawful act or omission on the part of the accused person, it is clear that there was no direct evidence that the accused caused the death of the deceased.
22. Proof in criminal cases can either be by direct evidence or circumstantial evidence. In the case of Neema Mwandoro Ndurya v. R [2008] eKLR, the Court of Appeal cited with approval the case of R vs. Taylor Weaver and Donovan (1928) 21 Cr. App. R 20 where the court stated that:

“Circumstantial evidence is often said to be the best evidence. It is the evidence of surrounding circumstances which by intensified examination is capable of proving a proposition with accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial.”



23. Whereas it is appreciated that a charge may be sustained based on circumstantial evidence, the courts have established certain threshold to be met if a conviction is to be based thereon. In the case of *Sawe -vs- Rep* [2003] KLR 364 the Court of Appeal stated as follows:-

“In order to justify on circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypotheses than that of his guilt; Circumstantial evidence can be a basis of a conviction only if there is no other existing circumstances weakening the chain of circumstances relied on; The burden of proving facts which justify the drawing of this inference from the facts to the exclusion of any other reasonable hypothesis of innocence is on the prosecution. This burden always remains with the prosecution and never shifts to the accused.”

24. In *R. vs. Kipkering Arap Koske & Another* [1949] 16 EACA 135, in the Court of Appeal for Eastern Africa had this to say:

“In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt. The burden of proving facts which justify the drawing of this inference from the facts to the exclusion of any reasonable hypothesis of innocence is on the prosecution, and always remains with the prosecution. It is a burden which never shifts to the party accused.”

25. Further in the case of *Abanga Alias Onyango vs. Rep* CR. A No.32 of 1990 (UR) the Court of Appeal set out the principles to apply in order to determine whether the circumstantial evidence adduced in a case are sufficient to sustain a conviction. These are:

“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 acted on to sustain the conviction and sentence of the accused.”

26. From evidence adduced, the accused was the last person seen with the deceased. In the case of *Republic vs. E. K. K.* [2018] eKLR Lesiit J, stated as follows:-

“The prosecution has adduced evidence which establishes that the deceased was last seen alive in the company of the deceased. That was in the evidence of PW5. Time was 9.30 a.m. Her evidence was not corroborated by any other witness. The accused has denied that and has countered the evidence of PW5 by stating that in fact, it was PW5 he saw with the deceased last. Given that the evidence is the word of the accused against that of PW5, the court has to look for corroboration or other evidence implicating the accused...”

27. Evidence adduced herein show that the accused was at home but did not take any step to take the deceased for treatment. The doctor formed opinion that injuries sustained by deceased were caused by assault. The explanation the accused gave concerning how the deceased sustained injury is not



convincing. I find that there is overwhelming circumstantial evidence linking the accused to the injury which led to the death of his wife the deceased herein.

**Whether malice aforethought was proved against the accused**

28. 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. From the evidence adduced, the intention to kill on part of the accused was not demonstrated. Evidence adduced showed how the accused and the deceased who were husband and wife lived in separate houses in the same compound. This shows that they may not have been living in harmony as husband and wife and a struggle may have ensued due to disagreement. No one was present when the incident occurred as their son Alex (PW3) was away in school and arrived around 9:00 p.m. finding his mother lying in bed with blood stains. From the foregoing, I find that malice aforethought was not proved beyond reasonable doubt. I therefore find that the offence of manslaughter was proved beyond reasonable doubt.
30. Final Orders: -
- 1. Accused is hereby convicted of the offence of manslaughter contrary to section 202 of penal code as read with section 205 of the penal code
  - 2. Right of appeal 14 days

**JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 30<sup>TH</sup> DAY OF APRIL, 2025.**

.....  
**RACHEL NGETICH**

**JUDGE**

In the presence of:

Mr. Kipkulei for Accused.

State Counsel – Mr. Kosgey

Court Assistant – Elvis.

