



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Chebii (Criminal Case E016 of 2023)  
[2025] KEHC 5515 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5515 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL CASE E016 OF 2023  
RB NGETICH, J  
APRIL 30, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**WILSON KIPCHUMBA CHEBII ..... ACCUSED**

**JUDGMENT**

1. The accused Wilson Kipchumba Chebii 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 1<sup>st</sup> day of May, 2022 at around 11:00 hrs at Terrain village, Kinyach Sub-location in Baringo North Sub-county within Baringo County murdered Wycliffe Kemboi Simotwo.
2. He denied the charge and the matter was set down for full trial with the prosecution availing a total of 6 witnesses in support of the charge preferred against the accused.

**Prosecution Evidence**

3. PW1 Dr. Wangare Wambugu a Pathologist at Baringo County referral Hospital testified that she examined the body of Wycliffe Kemboi Simotwo on 10<sup>th</sup> May 2022 as requested by Kinyach police station and the body was identified by the deceased's Uncle Festus Simotwo. She formed an opinion that the cause of death was multiple gun shot wounds. That the bullets received and fragments were taken for ballistic examination. She filled the postmortem form and produced in court as exhibit 1.
4. PW2 IC a minor aged 17 years and a student at [particulars withheld] Secondary school now in Form 1 testified that on the 1<sup>st</sup> May, 2022, he was herding cattle in the forest when they were attacked by people who were armed with guns and at the time, he was with Wycliffe Simotwo a teacher at [particulars withheld] Primary school and also PK and AK. He said the people chased them up river Kerio and then took over their cattle. He further stated that teacher Simotwo was shot and the people who attacked



- them were about 100 in number and he was able to identify one person who had a gun as he had seen him before while herding animals and the man is from Marakwet.
5. He said that he heard the sound of a gunshot, ran home and informed his father Julius and other people at home and went back to the scene with them after 3 hours and found the teacher had been killed. He said the deceased had injuries on the hand and legs. He said that the person he identified among the attackers is called Kalya the accused in this case and that he had not disagreed with the accused and they used to meet while grazing.
  6. PW3 PK a minor aged 15 years a form one student testified that on 1<sup>st</sup> May 2022, he was herding cattle at Kerio valley forest with AK, PK and I and while herding a Marakwet man inquired from him where his father was. He said that he saw about 20 people and the one who inquired of the whereabouts of his father was Kalya whom they used to find in the grazing field. He said he informed him that his father was at home then PW3 went to meet Wycliff who was his neighbour and the others who were ahead of them and who was on top of a tree. He said they informed him that the attackers had come and the attackers who included Kalya took the cattle.
  7. He said Wycliff came down from the tree and they ran towards Kerio Valley forest. That I and AR ran towards home. That he stayed with Wycliff hiding in the forest then they heard a gunshot and he ran leaving Wycliff there. He said he ran home and informed his father Abraham that the attackers had taken cattle. He said Wycliffe is a teacher at Kinyach and at the time he left Wycliff had not been killed.
  8. He said he remained home as his father and other people went to look for Wycliff and in the evening at around 4 p.m., he learnt that Wycliff had been killed. He said people screamed when the attackers arrived at around 11:00 a.m. and Kalya the accused herein had a gun when he inquired of the whereabouts of his father and the others also had long guns. He identified Kalya as the accused appearing virtually.
  9. PW4 AK a class 8 student at [particulars withheld] Primary school testified that on the 1<sup>st</sup> May, 2022, he was herding cattle at Kerio with Pius KipsemI and the deceased Wycliffe Simotwo when about 14 people armed with guns attacked them.  
He said the people inquired from Pius where his father was and he responded that his father was at home. He said he ran with Pius and found KipsemI and the deceased Wycliffe Simotwo ahead. He said the deceased Simotwo was on top of a tree cutting trees for cattle. PW4 informed the deceased of the attackers and the deceased advised them to run. PW4 run with KipsemI to one direction while Pius ran towards home to inform their parents that the cattle had been taken. They later heard the deceased Wycliff had been killed.
  10. He said they were attacked at around 11:00 a.m. and their parents went to the scene at around noon and on returning they were informed that Wycliff had died after being shot on the hand. PW4 said that he heard gunshots as he ran and that Kalya the accused herein had a long gun at the time he inquired from Pius where his father was. He positively identified the accused as the one appearing in court virtually.
  11. PW5 Festus Roktok Simotwo testified that he received a call from Richard Simotwo that his brother had been killed by bandits. He said he came and found his brother in the mortuary at Baringo Referral Hospital where he identified the body as that of Wycliff Kemboi Simotwo his brother. He said he witnessed postmortem and that he died from over 10 gunshots. That he was with his uncle when identifying the body.
  12. PW6 No.78XX5 CPL Pius Odeke the Investigating Officer who is attached DCIO Baringo North testified that on the 1<sup>st</sup> May, 2022, a murder report was made to Kabartonjo DCI office through Nginyach police station at around 11:00 a.m. that unknown number of armed bandits had raided



Terech area in Nginyach and the bandits were believed to be from Elkeyo Marakwet County and that they were armed with AK 47 and G3 rifles and during the incident around 125 heads of cattle were stolen.

13. He said they could not reach there immediately and thus went the following day and found one-person Wycliffe Kemboi Simotwo who was in company of three young boys I, A and P had been killed. He said the witnesses who identified the bandits recorded their statements. He said the accused herein Wilson Kipchumba Kalya was identified by the three witnesses and the accused was National Police Reservist (NPR) within Marakwet County but they were not able to arrest anyone involved immediately after the incident.
14. PW6 testified that on 20<sup>th</sup> July 2023, the accused was arrested within Aror in Marakwet West and was taken to Kasowar DCI office and they rearrested him. That before then on the 10<sup>th</sup> May 2022, a postmortem had been conducted by Dr.Wangare at Baringo County Referral Hospital and in her opinion, the cause of death was multiple gun shot wounds numbering about 10. she produced postmortem report in court. He said that since they arrested the accused, the entire Kerio Valley neighbouring Nginyach has been peaceful.
15. He said initially they did not know that the accused was an NPR officer but they came to know after his arrest but could not establish how long he had served as NPR officer. He said the accused was arrested by GSU officers in liaison with DCI Kapsowar. That he was arrested for another matter coming up in the cause of the month of April, 2024 and he identified him as the person appearing virtually before court.
16. Upon the closure of the prosecution case, by ruling delivered on the 5<sup>th</sup> March, 2024, the court found that a prima facie case had been established against the accused person and he was placed on his defence in accordance with Section 306(2) of the [Criminal Procedure Code](#).

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

17. The accused Wilson Kipchumba Chebii testified as DW 1. He gave a sworn statement. He confirmed that he is a National Police Reservist (NPR) and on 1<sup>st</sup> May, 2022, at around 10:00 a.m. to 11:00 a.m., he left home to go to plough his farm using a hired tractor. He said he was with Leonard who was using the same tractor and the tractor started with Leonard's farm and one Pius Chebii was about 100 meters away.
18. He said at around 11:00 a.m., they heard gunshots from far and they asked the tractor driver to stop the tractor and they were able to hear properly where the gunshot sound emanated from. He said he asked Benard to go with him to the hill to check where the gunshots were from. That they went to where Pius was and shortly, they heard the gun shots moving to their directions and they decided to move towards home. Together with Pius, Leonard and the tractor driver they left and before reaching home, they heard the sound had passed Kerio valley towards their side. He said Kerio valley is a border of Baringo and Marakwet and the other boundary is between Aror Location and Chesiman Location.
19. He said that the gunshots were first coming from Baringo then it moved to Aror then to Chesiman and the gunshots were continuous but he could not see the people shooting because it was far and when the gunshots crossed Chesiman, they proceeded home and found people had moved to the hill to hide. He said they later heard that police from Loiwach GSU Camp and Kinyach police followed the people who were shooting (bandits).
20. He further stated that on the 5<sup>th</sup> January 2022, he was not involved in stealing stock and that he went to the police station and found the OCS whom he informed of the gunshots and they said they had



- received the report and the police from Loiwach and Kinyach police station had followed the attackers. He went home and after 5<sup>th</sup> January, 2022 the chief said that people from Baringo had mentioned him. They were asked to go and explain where they were when the incident occurred. He and many others went and on reaching Kinyach, each of them explained where they were when the incident occurred and it was found that they were not involved and they were told to go back and proceed with their work.
21. He further stated that in July 2023, a person was killed in the bridge and the OCS called all the NPR's for a meeting in Kapsowar and the chiefs had a meeting at the DO's office then they talked to them and then called all the in-charges of the NPR who included him as he was in-charge Aror and this was on 14<sup>th</sup> July, 2024 and in the office they inquired where the incident occurred and who was in charge of the area and the incident was between his boundary and Baringo and he was informed that there was something he was required to go and write. He said they went to Kapsowar Police Station and at the station, DCI informed him that people from Baringo wanted him and a vehicle was coming from Kabarnet Police station who went and inquired where he was and they introduced him to the people from Kabarnet saying that he was a fellow police officer.
  22. The accused said he was informed that he being taken to assist with investigations and he was brought to Kabarnet and before being brought to court, DCI interrogated him and he explained to them then they brought him to court. He said he prayed for bond where he was released and later he was arrested again and charged in this case in the year 2023. He said that he was charged for a case of 2022 when he did not have a firearm as a disarmament was done. That as NPR they were being given firearm before disarmament in the year 2022. He said they used to be given firearm from police station and he was being given from Aror Police Station and the renewal of the firearm was after 2 weeks and whenever there was an issue, the OCS would explain for them how to use the firearm but they could not use without purpose/reason.
  23. The accused further stated that people recruited as NPR were people who had no criminal records in the society and whenever there was work for NPR, the Chief or the Assistant Chief must be there and that they could not go to work without an order from the OCS or the Chief and they were chosen by the public/community, assistant Chief, Chief, OCS and OCPD. He said they chose a person who was able to work and not a drunkard or a person who does wrong to the community members. He said he was elected as the in charge because they saw that he was able to lead NPR in Aror Sub-location. He denied the charge against him.
  24. DW2 Pius Chebii testified that he resides at Marakwet West near Aror and on 1<sup>st</sup> May 2022, he was in his farm at Aror when he heard gunshots from far which were moving close to where he was. He said the gunshots were moving closer to where he was near the farm and Leonard Teno and Wilson Chebii were close to him in the farm. He said the accused Wilson Chebii was ploughing with a tractor and that he went to where he was and inquired what was going on and then left the farm heading home.
  25. He said he walked with Wilson and Leonard and as the gunshots were on, they saw cattle moving and later parted to their homes. He said after at about 3 hours, police vehicles followed the cows. He said they later learnt that some people from Marakwet East had gone to steal cattle from Baringo and that he did not do anything else that day. He said after 2 months they were asked to go to chief from Baringo and together with accused they went with their chief from Marakwet and they were interrogated on where they were and they explained then they concluded that it was not them who had stolen.
  26. He denied that the accused killed the deceased Wycliff Kemboi as he was with the accused in the farm and they were summoned and interrogated. He said that the accused is a National Police Reservist and he knew that the accused was NPR.



27. DW3 to Leonard Koech Tenai testified that he resides at Arror in Elkeyo Marakwet and he is a National Police Reservist. He testified that on 1<sup>st</sup> May, 2022, he found a tractor and went to the accused to inform him that he had found a tractor and requested him to go with him to the farm. He said the tractor was for Cleophas and that the tractor started ploughing his farm and after finishing, the tractor then ploughed one line of the accused's land then they heard gunshots which were moving closer to them.
28. He said the tractor left and he went with the accused Wilson Chebii to where Pius Chebii (DW2) was in his farm. He said the gunshots crossed the Kerio River towards Elkeyo Marakwet then crossed another river to Marakwet East. He said they parted and went home. He further testified that the accused who is also NPR and his senior went to the police station and he went home. He said at that time they did not have guns as the Government had taken guns from them for 6 months then they returned. He said that they work under OCS and he cannot go to work without instructions from OCS. He said in their Sub-location, they are seven NPR's and it is the chief who chooses NPRs.
29. The accused through his advocate on record filed written submission.

### **Accused's Submissions**

30. Counsel for the accused submits that it is instructive that immediately after the incident, there were several gatherings attended by the witnesses who allege to have identified the accused yet they saw no need to name him until after one year two months (1 year 2 months); that it is human for one's memory to fade with the passage of time and the witnesses herein are not exception.
31. They submit that none of the prosecution witnesses was with the deceased at the time of the alleged offence. That the closest witness alleged that he heard gunshots while more than one kilometer away. That it is also noted that the number of bandits involved was high.
32. They submit that the Accused person testified on oath and called two witnesses and the evidence of the witnesses remains uncontroverted. They submit that the accused person was able to explain his movement on the material day including taking a report to the police of what he had witnessed.
33. Further that it came out clearly that the Accused who is the head of the National Police Reservists of his area, was also available and willing to assist with investigations including a trip to Baringo County in the company of his area chief where they were absolved of any wrong doing. Counsel submit that if indeed anybody could place the accused at the scene of the crime, such individuals had a lot of opportunities to do so instead of coming to write statements to that effect after his arrest more than a year down the line.
34. That at the same time, they urge this court to disregard the testimony of the Investigating Officer to the effect that failure to record statements on time was due to refusal by the teachers to the witnesses and lack of a Motor Vehicle. That this particular testimony is the imagination of the Investigating Officer in their humble submission.
35. It is submitted on behalf of the Accused person that whereas the prosecution satisfied the 1<sup>st</sup> element through production of a Postmortem Report the same cannot be said of the 2<sup>nd</sup> and 3<sup>rd</sup> element. That the above position was followed in Nyeri Criminal Appeal No. 352 OF 2012, Antonyndegwa Ngari -vs- Public [2014] eKLR.
36. They submit that the prosecution places reliance on the testimony of PW2, PW3 and PW4, however, this evidence could not withstand the test of cross examination and one of the most important admissions was that they were driven to the police station on 20<sup>th</sup> July, 2023 by the brother to the deceased and told to write a statement about one Kalya who was in custody at the same Police Station having been arrested on 14<sup>th</sup> July, 2023 while the offence is alleged to have occurred on 1<sup>st</sup> May, 2022. They submit



that PW6 the Investigating Officer just casually alleges that the Accused was arrested by a GSU officer who was never called to give the circumstances of the arrest. Counsel urge this court not to believe the testimony of I KipsemIC who alleges that the accused shot at him at point blank with an AK 47 rifle but he was not injured.

37. That it is not disputed that the Police responded to the attack in issue and even persuaded the attackers and this together with testimony of PW2, 3 & 4 that they even went back to the scene of crime afforded the witnesses an opportunity to name suspects if any and police to arrest him immediately.
38. That the prosecution through PW6 confirmed that the Accused was indeed a National Police Reservist (NPR) making it unnecessary to call witnesses to prove the same.
39. Counsel submit that the burden of proof in criminal trial remains with the prosecution and the defence is not obliged to help them. Further, after the Accused was put on his defence he tendered his evidence and called witnesses and this could not have been done earlier.
40. In conclusion, counsel submit that considering the evidence adduced herein and the case law put forth, the prosecution has failed to prove its case against the Accused beyond any shadow of doubt.

### **Analysis and Determination**

41. Under Section 203 of the *Penal Code* murder is defined as follows:

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

42. The ingredients for the offence of murder are well settled. The prosecution has to establish that
  - a. Proof of death
  - b. whether its accused who caused injuries which caused the death of the deceased
  - c. Malice aforethought.

#### **(a) Proof of death.**

43. It is not disputed that the deceased died. The prosecution evidence on this ingredient was mainly based on the evidence of PW1, PW2, PW3 and PW4. PW2, PW3 and PW4 said that on the 1<sup>st</sup> May, 2022, they were in the field guarding their cattle with the deceased when they were attacked by people who wanted take their cattle. They said that they ran away and they heard gunshots and later learnt that the deceased was shot by the attackers and died. The post mortem report was produced by PW1 Doctor Wangare Wambugu who conducted postmortem examination on the body of the deceased and found that the cause of death was as a result of gunshots.

#### **(b) Whether the accused caused injuries which led to death of the deceased.**

44. From the evidence tendered before court, it is clear that the evidence linking the accused to the murder was evidence of PW2, PW3 and PW4. They all testified that they were grazing animals in the field when a group of people armed with guns attacked them and took their cattle away. PW2 said he identified the accused among the people because he knew him as Kalya as they used to graze animals together in the fields. He said that the accused was carrying a long gun. The witnesses ran away and shortly they heard a gun shot and later learnt that the deceased had been shot dead. PW2 said while they were grazing animals, the accused whom he identified as Kalya inquired from him where his father was. He said the accused was carrying a gun and that he was with a group of people who had come to take their



cattle. He said together with PW3, they ran home and later learnt that the deceased was shot dead. The evidence of PW4 corroborated the evidence of PW3's that the accused called Kalya inquired from PW2 where his father was and at the time the accused was with a group of people armed with guns. There is therefore no doubt that the accused was among those who went to where PW2, PW3 and PW4 were grazing animals while armed and the doctor confirmed that the deceased died of gunshot.

45. The accused in his defence denied committing the offence saying that he was at home in Aror when the incident occurred. He however admitted that the name Kalya is his father's name a clear indication that the prosecution witnesses PW2, PW3 and PW 4 knew him very well. He also admitted that he was a police reservist (NPR) who was armed. The accused was identified at the scene while armed. I find evidence of PW2, PW3 and PW4 credible and their evidence connect the accused to the death of the deceased herein.

### **(c) Proof of malice aforethought**

46. Malice aforethought is set out under Section 206 of the *Penal Code* as thus:

“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.”

47. In the case of *Nzuki V Rep 1993 KLR 171* the learned Judges of Appeal set out the principles of determining whether intention to commit murder is proved as follows:

- “1. Malice aforethought is a term of art and is either an express intention to kill or implied where by a voluntary act by a person intending to cause grievous bodily harm to his victim and the victim died as the result.
2. Before an act can be murder, it must be aimed at someone and must be an act committed with one of the following intentions
  - (a) To cause death;
  - (b) Cause grievous bodily harm; and
  - (c) Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from his acts, and commits these acts deliberately.
3. Without an intention of one of these three types, the mere fact that the accused's conduct is done in the knowledge that grievous harm is likely or



highly likely to ensue from his conduct is not by itself enough to convert a homicide into the crime of murder.

4. ...

5. ...

48. In the cited case of Nzuki, supra, the Court of Appeal held that even though the appellant's conduct was done with the knowledge that the action is likely or highly likely to cause death or grievous harm, that in itself is not enough if there is no evidence to establish that the accused had formed an intention to cause death or to cause grievous harm, or knew his conduct may cause serious harm or death but committed the act deliberately any way.
49. PW1 who conducted the postmortem on 10<sup>th</sup> May, 2022 at Baringo County referral Hospital mortuary after examination, formed opinion that the cause of death was multiple gunshot wounds. The injuries inflicted on the deceased were very severe. The acts of the accused as evidenced from the prosecution witnesses and the postmortem report is evidence of malice. It is clear the intention the accused had in this attack was to cause the deceased death. The choice of where he aimed and severely injuring the deceased are indicative of one bent on inflicting maximum harm or death on his victim.
50. Further, it is trite law that anyone who uses such a lethal weapon and uses it to strike the deceased several times as accused did, ought to know that the injuries inflicted are likely to cause the death of that person together with targeting the parts of the body that are very delicate and could easily lead to death, all establish that the accused had premeditated his actions. I find that malice aforethought under Section 206 (b) of the *Penal Code* was proved beyond reasonable doubt.
51. From the foregoing, I find that the three ingredients for the offence of murder have been proved beyond reasonable doubt and I proceed to find accused guilty of the offence of murder contrary to Section 203 of the *Penal Code* as read with section 204 of the penal code and convict him accordingly.

**Final Orders: -**

52.

1. Accused is hereby convicted of the offence of Murder contrary to Section 203 as read with Section 204 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. Buluma for Accused.

Ms. Kosgey for the State.

Accused – present.

Court Assistant – Elvis.

