



REPUBLIC OF KENYA



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**Republic v Langat & another (Criminal Case E005 of 2021)
[2025] KEHC 5193 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5193 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE E005 OF 2021
HI ONG'UDI, J
APRIL 30, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

BERNARD LANGAT ALIAS BENADO 1ST ACCUSED

NELSON CHERUIYOT LANGAT ALIAS FIFTY 2ND ACCUSED

RULING

1. Bernard Langat alias Benado and Nelson Cheruiyot Langat alias Fifty hereinafter referred to the 1st and 2nd accused respectively are facing a charge of Murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars being that the 1st and 2nd accused on 24th December, 2020 at around 2230 hrs at Saimet Village, Kapkures sub-location within Nakuru West sub-county within Nakuru county jointly murdered Bernard Kipngetch Arap Malel.
2. They both denied the charge and the case proceeded to full hearing with the prosecution calling seven (7) witnesses. Upon the close of the prosecution case counsel for the prosecution and counsel for the second accused opted not to file any submissions. Mr. Mongeri for the 1st accused filed submissions dated 23rd April, 2025.
3. A summary of the prosecution is as follows: Dr. Anthony Wainaina Ngigi who testified as PW1 conducted the post mortem on the body of Bernard Kipngetch on 4th January, 2021 at Nakuru public mortuary. He found the body to have had bruises on the head, axillary region, left forehead, right shoulder and left sheen. There were blood clots under the scalp, left temporal region of the head and back of the head. He found the cause of death to be acute severe head injury secondary to blunt force trauma to the head. He produced the post mortem report as P EXB 1.
4. David Kering the area Chief of Baruk location Nakuru testified as PW2. On 25th December, 2020 at 5.05am he received a call from a resident of Soimet area, who informed him of the deceased's death. He



- went to the scene and confirmed the report. Two juveniles (PW3 and Chebet) informed him of having seen the two accused beating the deceased.
5. Emmanuel Kiprotich (PW3) now aged 18 years testified that him and his sister Chebet lived with their grandmother (PW6). On 24th December, 2021 at 11pm they were at PW6's house when the deceased (their uncle) came knocking asking for a blanket. He was not given the blanket. A male neighbor came and calmed him down and he left. He however returned and knocked again. This time PW6 opened the door for him as Chebet went to call accused 1 on PW6's instructions.
 6. It was his evidence that Accused 1 came with Accused 2, and it was then that fighting erupted between Accused 1 and the deceased. The former boxed the latter on the chest and kicked him and he fell down while accused 2 did nothing. The deceased was then covered with a blanket as he was no longer breathing. Both accused then left. The deceased's body was taken away the next morning after PW2's arrival.
 7. In cross examination he said the deceased used to take alcohol and was drunk on the material night. He also stated that PW6 was saying that the deceased had thrown a son of Accused 1 into a quarry, and Accused 1 was very bitter. He further stated that during the fight, Accused 1 and the deceased were boxing each other. He also mentioned that the deceased's wife was present when this incident occurred.
 8. At one point he said they were using a lantern to see while at another he said it was dark and at another he said the deceased's wife had a phone whose torch had light which enabled them to see. He however admitted that the deceased had a habit of insulting PW6 and even insulted her on this night though he never heard what the insults were as he was asleep.
 9. PW5 – Geoffrey Kimutai Laboso a neighbor to PW6 heard her making noise from her home and he went there. He heard the deceased making noise and asking for a blanket from PW6. The deceased who was drunk was with his wife. After talking to him the deceased went back together with his wife to his house and so did PW5. He never saw any of the accused persons on that night.
 10. In cross examination he said the deceased and his wife were both drunk on the material night. He denied seeing the deceased nor his wife with a torch or phone.
 11. PW4 Joseph Omeje Omollo a neighbor to the deceased identified the body for post mortem.
 12. Christina Chepchirchir testified as PW6. The deceased was her nephew (sister's son). On the material night she was asleep in her house with PW3 and Chebet (both are her grandchildren) when the deceased came asking for a blanket. She then heard him quarrelling outside with someone she did not know. The deceased had left the house insulting her badly. She sent for Accused 1 to come and he complied. She was not sure whether Accused 1 and deceased fought. She later on heard the deceased's mother screaming and that's when she knew he had died. She denied seeing Accused 2 anywhere that night.
 13. In cross examination she said the person pushing her door that night was the deceased. She screamed because he was violent. PW5 came and she got a chance and escaped to the house of one Alice who was not there. Before escaping she had sent PW3 and Chebet to call Accused 1. Upon her return she found PW3, Chebet and the deceased lying down with Mzee Sitienei and Accused 1 checking on the deceased. She further said there was moonlight and the person she saw beating the deceased was Accused 1.
 14. No. 82722 P. C. John Pilale PW7 who was the investigating officer explained that the information he received on the attackers was from PW3, PW6, Chebet and deceased's wife. He then had the suspects arrested and later charged.



15. In cross examination he confirmed that he did not recover any weapon and there was no light at the scene. He further stated that from the information gathered PW6 was not present at the time of the assault. Its therefore PW3 and Chebet who witnessed the assault. He clarified that the report received indicated that the body was on the road side but when they visited the scene they found it inside the compound.
16. In his written submissions dated 23rd April, 2025, Mr. Mongeri for Accused 1 stressed that the evidence before this court is purely circumstantial and it can't be used to convict the accused. He referred to the cases of Teper v Republic 1952 A C and Republic v Ali Suleiman Ali [2021] eKLR. He further submitted that failure to call crucial witnesses namely Carolyne Cheruto and Valentine Chebet was detrimental to the prosecution case. On this he relied on the case of DMK v Republic (Criminal Appeal E056 of 2022) [2023] KEHC 25235 (KLR) (9 November, 2023) (Judgment) and Bukenya & Others v Uganda [1972] E. A 349.
17. Counsel further contends that the prosecution has not proved a prima facie case against Accused 1. On this he relied on the cases of DMK V Republic (supra), among others.

Analysis and determination

18. Both accused persons are facing a charge of murder contrary to section 203 as read with section 204 of the penal code. The prosecution presented seven (7) witnesses before closing its case. At this point this court is to determine whether the prosecution has established a prima facie case against both accused or any one of them to call upon them or him to make their defence.
19. What then is a prima facie case? The Black's Law Dictionary Tenth Edition at pg 1382 defines it as:
 - “ 1. The establishment of a legally required rebuttable presumption.
 2. A Party's production of enough evidence to allow the fact – trier to infer the fact at issue and rule in the party's favour”
20. A party with the burden of proof (in this case the prosecution) presents a prima facie case when the party presents sufficient evidence to support a verdict in the party's favour assuming the opposing party does not rebut or disprove it.
21. I now wish to analyse the evidence as set out in the above paragraphs. For a case of murder to be established the following ingredients must be proved:
 - i. The fact and cause of death
 - ii. That the act causing the deceased's death was by the accused and it was unlawful
 - iii. The accused in committing the unlawful act had malice aforethought.
22. There is no dispute about the fact of death. PW4 identified the body of the deceased who was a neighbor for purposes of the post-mortem. PW1 who conducted the post mortem found the deceased to have suffered acute severe head injury caused by blunt force trauma on the head (P EXB 1). It is therefore clear that the deceased did not die of a natural cause of death.
23. The next issue is whether the prosecution has established that the death was caused by the unlawful act/acts of the accused persons. The key witnesses on this point are PW3, PW5 and PW6. I will start with their evidence in respect of Accused 2.



24. It is PW3's evidence that though Accused 1 came with Accused 2 to the scene, the fight was between accused 1 and the deceased. According to him Accused 2 just sat on a seat outside and left later with Accused 1.
25. It was PW5's evidence that on that night when he came to PW6's home he never saw any of the accused persons at the scene.
26. PW6 who had screamed for help said she never saw Accused 2 at her home that night.
27. It is PW7 who caused the arrest of Accused 2. His evidence is that he arrested and had Accused 2 charged on the information he gathered from PW3, deceased's wife, Valentine Chebet and PW6. The evidence by PW3 and PW6 does not support his evidence as far as Accused 2 is concerned. The deceased's wife and Valentine Chebet never testified.
28. Considering what I have outlined above, the Law and case Law in several cases among them (i) Ramanlal Trambaklal Bhatt v Republic [1957] E. A 334 – 335 (ii) Ronald Nyaga Kuiru v Republic [2018] eKLR, my finding is that the prosecution has failed to prove its case against Accused 2. Its not clear why he was even charged in the first place.
29. I now move on to the evidence against Accused 1. There is no dispute that this incident happened late at night. The deceased and PW6 lived on the same compound in different houses. The deceased was a son to PW6's sister. It is not stated where the deceased's mother lived. PW6 lived in the same house with her grand children (PW3 and Valentine Chebet), while the deceased lived with his wife, though it was never stated whether they had any children.
30. Whatever happened that night is said to have been witnessed by PW3, Valentine Chebet and the deceased's wife whose statements were recorded. These were therefore crucial witnesses. Valentine Chebet and the deceased's wife never came to testify despite several opportunities given to the prosecution to avail them. I won't fail to mention that even having PW3 and PW6 appear to testify before this court was not easy.
31. Can PW6 be classified as a truthful witness? In respect to the happenings and in particular the assault on the deceased this is what she stated in her evidence in chief:

“ Accused 1 came. I was by then in the house and I had opened the door. I told him that the deceased wanted a blanket which I did not have. The deceased was outside. I have forgotten what happened, whether they fought or not”.
32. When cross examined by Mr. Mongeri for Accused 1 this is what she stated:

“ I sent Chebet and Musungu to call Accused 1 before I went to Alice's place. On my return I found Chebet Musungu and deceased lying down. I did see Mzee Sitienei and accused 1 checking on the deceased. I never saw the deceased and accused fighting. PW5 is a neighbor. He came there. I use a tin lamp. I had put it off. Outside was moonlight. Yes, I saw a person beating the deceased. The attacker was Bernado. I did not see what he used to hit him”.
33. The question is if she disappeared before the beating and only returned to find the deceased lying down with 2 others, at what point did she witness Bernado attacking the deceased? At one point she says she never saw them fighting and later she says she saw Bernado beating the deceased. So, which is which?
34. The other witness is PW3 Emmanuel Kiprotich now aged 18 years. At the time of incident, he was a juvenile roughly aged 13 years old. From his evidence Chebet was younger than him. It was PW3's



evidence that PW6 sent Chebet to call Accused 1 before she left for Alice's house. And this was before the incident. On the other hand, PW6 stated that she sent PW3 and Chebet to call Accused 1.

35. According to PW3 the deceased was not only drunk but he was accused of having thrown 1st accused's son in a quarry. PW6 and even PW7 (the investigating officer) never made mention of this. In cross examination by Mr. Mongeri PW3 stated this:

“The fight was between Accused 1 and the deceased. They were just boxing each other.....
The fight was outside There was no quarrel between Accused 1 and deceased. The accused (Accused 1) was asking him why he had thrown his child in the quarry”.

After stating all the above, he again stated:

“I did not count the fists. It was dark. The deceased never boxed him. I was at the door. They were about 3 meters apart. I saw everything”.

36. PW7 arrested and charged Accused 1 based on the statements that he had acquired from PW3, PW6, Chebet and the deceased's wife. PW3 and PW6 who testified before this court contradicted themselves in their own evidence and so one cannot say that their evidence was corroborative. May be if Chebet and the deceased's wife who were very crucial witnesses had testified the case may have been different.

37. PW7 further admitted in cross examination that indeed the 1st report received at the police station was that a male adult had been found lying at the road side appearing drunk. When he went to the scene he found the deceased's body on the compound outside a certain house and not by the roadside. Where exactly was the scene of incident?

38. It has been indicated by PW3, PW5 and PW6 that the incident at PW6's home/house happened late in the night. PW3 was even asleep and was woken up by the deceased's knocking on their room. PW6 also said she was asleep, when the deceased came knocking. As they were outside, what was the source of light outside the house? PW3 said the deceased's wife had a torch on the phone whose light assisted them to see. He did not say anything about moonlight which PW6 had mentioned. PW5 who had gone to PW6's home said neither the deceased nor wife had a torch or phone. He too never mentioned anything about moonlight.

39. After doing the above analysis I find that the prosecution case herein is full of so many loopholes. The evidence of the supposed to be key witnesses is not corroborative at all. Even the two witnesses (PW3 and PW6) contradict themselves in their own evidence. So, whose evidence does the court rely on in this case? As was stated in the case of Ronald Nyaga Kiura (supra)

“A prima facie case is established where the evidence tendered by the prosecution is sufficient on its own for a court to return a guilty verdict if no other explanation in rebuttal is offered by an accused”

40. In the present case placing Accused 1 on his defence would amount to asking him to prove his innocence in a case where the prosecution has failed to prove his guilt. If placed on his defence and he elects to remain silent which is his right, would this court find him guilty? My answer would be a big NO.

41. My finding therefore is that the prosecution has failed to prove a prima facie case against both Accused 1 and Accused 2 who I hereby acquit under section 306(1) of the *Criminal Procedure Code*. They shall both be released unless otherwise lawfully held under separate warrants.



42. Orders accordingly.

**DELIVERED, DATED AND SIGNED THIS 30TH DAY OF APRIL, 2025 IN OPEN COURT AT
NAKURU**

H. I. ONG'UDI

JUDGE

