



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Republic v Longai (Criminal Case 17 (E035 of 2021)
[2025] KEHC 5502 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5502 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CRIMINAL CASE 17 (E035 OF 2021
AC MRIMA, J
APRIL 30, 2025**

BETWEEN

REPUBLIC STATE

AND

**MOSES KAMATIL LONGAI ALIAS BOY ANDREW KIPYEGO CHONGWONY
ALIAS SEBEI MOJA ACCUSED**

JUDGMENT

Introduction:

1. Moses Kamatil Longai alias Boy and Andrew Kipyego Chongwony alias Sebei Moja, the 1st and 2nd accused herein, were charged with the offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence were that on the 5th day of May 2021 at Matumbei Location of Endebes Sub-County within Trans-Nzoia County jointly murdered Komol Murambi alias Kronget.
2. The accused pleaded not guilty and a trial was held. At the close of the prosecution's case, it was established that a prima facie case had been established. Accordingly, the accused were placed on their respective defenses.

The Prosecution's case:

3. The prosecution called 5 witnesses in its bid to prove the information. Amos Kemoi Ngema was PW1. It was his evidence that he used to sell the local brew known as chang'aa at his home. That, on 5th May 2021 at about 4pm, he was at home with many customers including one Dennis Kwemoi, Komol Murambi (hereinafter referred to as 'the deceased'), the accused and others. According to him, the alcohol got finished at around 7pm and the people left except the deceased and the accused who remained behind. The three subsequently left; the deceased being ahead as the accused hurriedly



- followed him. PW1 knew the accused so well, not only his neighbours, but his long-time customers and that they were brothers.
4. All was well until the following day at 2pm when the said Dennis Kwemoi came to PW1's place and informed him that the deceased had died, but did not tell him who had killed him. PW1 then recalled that as the accused and the deceased left his place the previous night, the each of the accused had a new panga which appeared like were not yet sharpened. PW1 knew the 2nd accused well, who like him, had a farm in the forest, but the 1st accused did not have such a farm, but only assisted the 2nd accused. It was PW1's further testimony that there was all manner of animals in the forest and one had to be always armed with at least a panga.
 5. PW1 also knew the deceased as a general labourer who did not have a farm in the forest. Although PW1 knew the deceased well, the first time to visit his place was when he left with the accused, the day before he was killed.
 6. PW1 also recalled that as the deceased and the accused took alcohol at his place, the deceased complained that he had the 2nd accused's debt for an animal he had supplied him, but was yet to pay for. He, however, stated that the deceased did not tell him if he had any problem with the 2nd accused.
 7. It was PW1's further evidence that that the deceased was found far away from his farm where there were no close homes. He affirmed that he did not witness how the deceased died, but was only told of the death by Dennis Kwemoi who used to live with the deceased. PW1 was, however, surprised that the accused disappeared from the area the day the deceased was killed until when the 1st accused was arrested in Uganda and the 2nd accused was arrested in Ndorobo area.
 8. When the body of the deceased was found, the police were informed and they hurriedly visited the scene. They included No. 111445 PC Okoth Kennedy, who was attached at DCI Endebes performing general investigations and who subsequently was the investigating officer in this case [testified as PW5], among other officers.
 9. PW5 stated that the police received a report about a dead body lying in Kimothon Forest located in Matumbei Division within Trans Nzoia County. That was on 6th May 2021 at about 1600hrs. The police quickly mobilized and visited the scene. They arrived at the scene at about 9pm where they found people gathered among them Dennis Kwemoi who was staying with the deceased. PW5 began interrogating the people who had gathered including Dennis Kwemoi who narrated the events of the day before the deceased died. It was Dennis Kwemoi who reported the disappearance of the deceased to the Police through OB No. 23 of 7th May 2021 at Salama Police Station. The police later took away the body of the deceased as investigations continued.
 10. PW5 also observed the body and saw that it had a deep cut on the throat. He also admitted that the area had incidences of stock theft, but denied that the injuries may have been caused by wild animals. PW5 also ensured that a post mortem examination on the body of the deceased was carried out.
 11. No. 236139 CI Fredrick Simiyu Sirengo was gazetted by the Attorney General through Gazette Notice No. 5853 of 2nd August 2001 as a Scenes of Crime officer. He testified as PW4. It was his evidence that he received a CD marked 'A' from PW5 containing images with a request to process the same. That, he processed the images and produced several photographs which he produced in Court as exhibits together with his Certificate.
 12. PW5 also organized for the autopsy which was carried out by Dr. Yvette Kisaka and a Post Mortem Report was duly prepare. The report was, however, produced in Court by Dr. Dennis Nanyingi who testified as PW3. Dr. Nanyingi had worked and known Dr. Yvette who was pursuing further studies,



hence, could not attend Court. PW3 stated that he was a Senior Medical Officer at the Kitale District Hospital having graduated from Kenyatta University with a Medical Degree in MBChB in 2014.

13. PW3 took the Court through the Post Mortem Report. He stated that on 11th May 2021, the post mortem was conducted on the deceased after the body was identified by one David Kipchumba Murami [testified as PW2] and one James [not a witness]. It was his evidence that externally, the deceased had obvious deep cut on the throat, skin lacerations on both limbs and anterior tibia region. He also had stab wounds on left side of the chest with a depth of 3cm – 4cm, a deep cut on the chin of about 5 cm and the head and the upper body were led together by skin. Further, the blood vessels, muscles, nerves and vertebrae were all severed. The spinal cord and spinal column were severed at the thoracic region.
14. The cause of death then opined to be homicidal cut throat injury. On cross-examination, PW3 stated that the post-mortem examination was conducted 6 days post death and the body had undergone rigor mortis (stiffening of the body) and skin peeling. He stated that there was a single stab wound on the chest, the neck was severed and there was a cut wound on the chin area. PW3 stated that it was not possible to state if the injuries were inflicted when the deceased was dead or alive and asserted that the cause of death was the cut on the throat and it was not possible that such injuries were caused by wild animals.
15. The investigator then embarked on looking for the accused who had both disappeared from the area. He mobilized the public through the National Police Reservists [NPR]. It was an NPR officer who found the 1st accused hiding in the forest as they were searching for some lost animals. He had him arrested and taken to Endebes Police Station. PW5 interrogated the 1st accused about his brother, the 2nd accused, who informed him that the 2nd accused had travelled to Uganda. PW5 liaised with his counterparts in Uganda, the 2nd accused was arrested on 31st May 2021 and handed over to the police at the Kenyan border who in turn took him to Endebes Police station.
16. PW5 also interrogated the 2nd accused on his whereabouts and on the death of the deceased. The 2nd accused complained that the deceased used assault them and that it why they decided to kill him and ate his Adams apple. PW5 stated that a confessionary statement was not recorded at the station. He also admitted that no photographs were taken of the 1st accused when he was found and arrested in the forest, although he appeared dirty and hungry. To PW5, he established that some people used to live inside the forest and that the accused stayed together and he used to undertake farming and used to keep livestock. PW5 also admitted that there was nothing that the accused was arrested with that connected him to the crime. It was his evidence that Dennis Kwemoi recorded a statement and left for Uganda and that was why he was not able to call him as a witness. PW5 claimed that Dennis Kwemoi had been threatened by the family of the deceased from testifying in Court and not the accused.
17. PW5 processed the accused, took them for mental assessment and eventually arraigned them before Court after getting the nod by the Prosecutor to charge them accordingly.
18. It was on the basis of the foregoing evidence that the accused were placed on their defenses.

The Defence cases:

19. Both accused gave sworn testimonies and none called any witness. Moses Kamatil Longai, the 1st accused, stated that he was a farmer from Kipsigon in Bungoma County. That, on 4th May 2021, he was with his brother, the 2nd accused, at the home of PW1 drinking chang'aa until when they left at 6:30pm and went into the forest where they lived. The 1st accused testified that he did not know the deceased since he was new in the area and had only been there for one week. According to the 1st accused, the 2nd



- accused had another wife in Uganda and had intended to visit them to sort out family issues. To that end, the 2nd accused left for Uganda the following morning at around 9am.
20. Speaking about himself, the 1st accused stated that he remained home and sprayed the potatoes and at around 2pm, he went back to PW1 for alcohol and thereafter returned to the 2nd accused's home. He then saw a group of people screaming and rushing to a scene and joined them and upon arrival, he saw a body of a person that had been mutilated. He stated that he did not know him and thus returned home.
 21. He denied killing the deceased and stated that he was instead arrested at his father's home at Cheptale. He denied hiding and eating the deceased's body. On cross-examination, he stated that he was not armed when they went to drink alcohol at PW1's place. It was his testimony though that people were allowed to live in the forest.
 22. Andrew Kipyego Chongwony was the 2nd accused. It was his evidence that he hailed from Endebes sub-county but his family was in Riwo in Uganda. It was his case that on 5th May 2021 his mother, Rose Chelang'a visited him in the forest and informed him that his children were suffering as his wife had been married off to another man. He, therefore, was supposed to go to Uganda. It was his evidence that he knew the deceased having come to the forest in 2020. He further stated that he knew PW1 since he used to sell alcohol. He affirmed that he went to his place with 1st accused for a drink where he saw the deceased. He testified that he had bought two pangas for cultivation and by then, the pangas were not sharpened. He claimed the accused left PW1's place at about 9pm whereas the deceased left at about 7.30pm.
 23. The 2nd accused denied using the pangas to kill the deceased. It was his position that carrying a panga is a normal thing in the forest. He claimed to have left them at home when he went to Uganda and that the police did not ask him for the pangas. The 2nd accused further stated that he did not know that the deceased had been killed when he left for Uganda and that it was not true that he had escaped to Uganda. It was his case that he owns a business at his home in Uganda, and that is the place he was arrested. To him, the only reason he had been linked with the death of the deceased was because he had travelled to Uganda. He claimed that he was beaten and injured by the DCI officers and KPR from Uganda.
 24. Upon cross-examination, it was his evidence that his mother visited him in the forest on 3rd May 2021. He claimed to have planted beans for her and that he escorted her back on 5th May 2021 and returned to Kenya. The 2nd accused stated that by then, his children were in Suam and not in Riwo in Uganda and that had gone to Suam and proceeded to Riwo after he did not get his children thereat. He also admitted that he did not have any medical evidence that he was assaulted. He, however, affirmed that he had bought 2 pangas at Salama Centre but was not given any receipts since the shops are local.
 25. The 2nd accused admitted knowing the deceased and did not share any alcohol with him at PW1's place. On re-examination he stated that there was no evidence that the deceased was killed by his two unsharpened pangas and that none of the witnesses saw him killing the deceased. He stated further that he had no debt with the deceased. He denied doing any business with the deceased. It was his case that he left the two pangas in his house in the forest.
 26. On closure of the defence cases, parties were directed to file written submissions. Whereas the accused filed their joint written submission dated 18th April 2024, the Prosecution did not. The arguments contained in the submissions will be dealt with in the analysis section of this judgment.



Analysis:

27. Having elaborately reproduced the parties' respective cases and submissions, the only issue for determination is whether the Prosecution proved the charge of the offence of Murder to the required standard. The offence and punishment of Murder is created by Section 203 as read with section 204 of the Penal Code in the following manner; -
203. Any person who with malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
204. Any person convicted of murder shall be sentenced to death.
28. In Criminal Appeal No. 352 of 2012 Anthony Ndegwa Ngari -vs- Republic [2014] eKLR, the Court of Appeal established the elements that, if proved, constitute the offence of murder. It enumerated them as follows: -
- (a) the death of the deceased and its cause;
- (b) that the accused committed the unlawful act which caused the death of the deceased; and
- (c) that the accused had malice aforethought.
29. This Court will, hence, interrogate each of the elements in turn.

The death and its cause:

30. From the evidence, the fact of the death of the deceased is not in contest. Both the prosecution witnesses and the accused attested to that fact.
31. For avoidance of doubt, when PW2, the deceased's brother, testified, he stated that he went to the forest where he saw the lifeless body of the deceased. Going by the nature of the injuries the deceased suffered, he described that he was 'slaughtered'. PW2 also witnessed autopsy being conducted on the deceased. It is, therefore, without doubt that the fact of death was proved.
32. As to the cause of death, the Post Mortem Report attested to such. It was medically certified that the deceased's death was homicidal cut throat injury. There being no any other contrary evidence, this Court finds that both the death of the deceased and its cause were proved.

Who caused the death?

33. A review of the evidence reveals that there was no single witness who proffered direct evidence on the deceased's cause of death.
34. In the premise, this Court will resort to the tenets of circumstantial evidence. The principles that guide a Court in ascertaining the probative value of circumstantial evidence were set out in the locus classicus case of R -vs- Kipkering arap Koske & Another and subsequently affirmed by the Court of Appeal in both GMI -vs- Republic (2013) eKLR and Musii Tulo vs. Republic (2014) eKLR. The Courts observed as follows: -
- i. The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- ii. The 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.
35. This Court will, hence, pit each of the foregoing elements against the evidence before this Court. From the evidence, the following facets of evidence are not controverted; that the accused and the deceased were at the PW1's place and took alcohol a day before the deceased was killed; that by then the accused had each a panga; that the accused followed the deceased when he left PW1's place; the accused disappeared from their home the following morning before the deceased was found dead.
36. There was, however, an attempt by the 2nd accused to aver that the deceased left PW1's place at 7pm whereas the accused left at 9pm, but that evidence was controverted by the 1st accused who confirmed that they all left at around 6:30pm. One, therefore, wonders how the accused could have left PW1's place both at 6:30pm and 9pm. The truth is that one of them was untruthful. That issue was then resolved by PW1 who corroborated the evidence of the 1st accused that the accused and deceased left at 6:30pm and that the accused followed the deceased as he left while armed with pangas.
37. As regards the pangas, whereas the 2nd accused averred that they were new and unsharpened, no evidence was led to that end. It remains a fact that the accused were armed with pangas. Further, this Court takes judicial notice of the fact that a panga can be sharpened in a few minutes. Further, even an unsharpened panga can cause injuries including cuts.
38. On the accused disappearance, there was evidence by PW5 that the accused were not anywhere in their homes and he had to use the NPR who sought for them until the 1st accused as found hiding in the forest. The position taken by the 1st accused that he did not disappear cannot, therefore, hold. The 2nd accused's attempt to absolve himself from the fact that he also disappeared into Uganda was not successful. The 2nd accused did not adduce any evidence after the prosecution had led evidence that he left immediately after the killing of the deceased and in circumstances that pointed to his involvement in the murder of the deceased. In such a case, whereas the legal burden of proof squarely and throughout rests on the prosecution, the evidential burden of proof shifted to the accused and he was under a duty to disprove the prosecution evidence. Without such contrary evidence, a Court will most likely agree with the position taken by the State. That was the case here.
39. Affirming the probative value of circumstantial evidence, the Court of Appeal, in the Musii Tulo case [supra] stated as hereunder: -
- ... Circumstantial evidence is as good as any evidence if it is properly evaluated and, as is usually put, it can prove a case with the accuracy of mathematics.
40. Courts have, over time, accepted that the guilt of an accused does not have to be proved by direct evidence alone. Circumstantial evidence, namely evidence that enables a Court to deduce a particular fact from circumstances or facts that have been proved, can form as strong a basis for establishing the guilt of an accused person as direct evidence.
41. Therefore, on this Court's prudent assessment of the facts and the application of the law, it is hereby found and held that the totality of the prosecution's evidence primarily points to the guilt of the accused. There was no any explanation upon any other reasonable hypothesis than that of the guilt of the accused. In other words, there were no other co-existing circumstances which weakened the chain of circumstances relied on in inferring the guilt of the accused. There is every reason to strongly believe, without doubt, that the accused accosted the deceased when he left PW1's place and killed him by cutting through his neck.



42. In the end, this Court finds and hold that both the Accused committed the unlawful act which caused the death of the deceased.

Malice aforethought?

43. The Court will now consider whether the accused acted with malice aforethought in injuring and killing the deceased.

44. Section 206 of the [Penal Code](#) defines 'malice aforethought' as follows: -

206. 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 fight or escape from custody of any person who has committed or attempted to commit a felony.

45. The Court of Appeal has also dealt with the issue of malice aforethought on several occasions.

46. In *Joseph Kimani Njau vs Republic* (2014) eKLR, the Court of Appeal in concurring with an earlier finding of that Court (but differently constituted) in *Nzuki vs Republic* (1993) KLR 171, held as follows: -

Before an act can be murder, it must be aimed at someone and in addition, it must be an act committed with one of the following intentions, the test of which is always subjective to the actual accused; -

- i. The intention to cause death;
- ii. The intention to cause grievous bodily harm;
- iii. Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from his acts, and commits those acts deliberately and without lawful excuse with the intention to expose a potential victim to that risk as the result of those acts.

It does not matter in such circumstances whether the accused desires those consequences to ensue or not in none of these cases does it matter that the act and intention were aimed at a potential victim other than the one succumbed. 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 a crime of murder. (See *Hyman vs. Director of Public Prosecutions* (1975) AC 55". (emphasis added).

47. Malice aforethought can be established expressly or by inferences to be drawn from the facts and circumstances before Court. The East African Court of Appeal explicated the circumstances in which



malice aforethought can be inferred in the case of Republic vs. Tubere s/o Ochen [1945] 12 EACA 63 as follows: -

- a. The nature of the weapon used; whether lethal or not;
 - b. The part of the body targeted; whether vulnerable or not;
 - c. The manner in which the weapon is used; whether repeatedly or not;
 - d. The conduct of the accused before, during and after the attack.
48. On the conduct of the deceased before, during and after the attack, it is on record that when the Accused killed the deceased, they both disappeared from their home until when they were arrested. Further, the Accused purposed to kill the deceased by slaughtering him through the neck.
49. The neck and the respiratory system are such critical parts of the human anatomy. It goes beyond any peradventure that once the organs are subjected to serious injuries, then death was eminent. Inflicting such injuries on someone can only be intentional. The rationale was apparent that it was to deprive the deceased of his life. The manner of execution of the mission was very deliberate and targeted. The accused aimed and cut through the neck.
50. By considering the cumulative actions of the accused in the manner they executed the killing and their conduct before and after the unlawful act, it is without any shred of doubt that the accused purposed to kill the deceased.
51. The prosecution, therefore, proved malice aforethought in this case.
52. In the premises therefore, this Court finds and hold that the prosecution proved its case on the charge of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*. As a result, each of the accused herein, Moses Kamatil Longai alias Boy and Andrew Kipyego Chongwony alias Sebei Moja are accordingly convicted of Murder pursuant to Section 322(2) of the *Criminal Procedure Code*.
53. Orders accordingly.

DELIVERED, DATED AND SIGNED AT KITALE THIS 30TH DAY OF APRIL, 2025.

A. C. MRIMA

JUDGE

Judgment delivered virtually in the presence of:

Mr. Kimani, Learned Counsel for the Accused.

Miss. Rop, Learned Prosecutor instructed by the Director of Public Prosecutions for the State.

Chemosop/Duke – Court Assistants.

