



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Sigilai (Criminal Case 7 of 2020)
[2025] KEHC 7173 (KLR) (29 April 2025) (Judgment)**

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**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL CASE 7 OF 2020**

**RL KORIR, J
APRIL 29, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

PETER KIPRONO SIGILAI ACCUSED

JUDGMENT

The Charge

1. Peter Kiprono Sigilai (Accused) was 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 27th day of March, 2020 at Kapkimolwa, Keneni village within Bomet East Sub -County, murdered Kenneth Kiprotich Kosgei.
2. The Accused took plea on 3rd September 2020 and denied the charge. A plea of not guilty was consequently entered and the case proceeded to full trial with the Prosecution calling eleven four witnesses.

The Prosecution's Case

3. The Prosecution's case was that the Accused went to his estranged wife's home where he found the deceased in the house then occupied by his wife. He stabbed him several times and left. The Prosecution called Steve Kipkoech (PW1 who testified that on the material day while on his way from hospital, he met the Accused who was his friend and neighbour on the road near Kapkimolwa Primary school. That the Accused invited him to go and look for busaa (local brew) together. That when they went to the first home and missed, the Accused suggested that they go to his (Accused's) wife's house. They passed by a local kiosk where they ate before proceeding to the home.



4. PW1 stated that upon arriving at the wife's home, the Accused entered the grass thatched house and then came out and entered a mabati house. That he came out shortly and said that they should leave while complaining that someone was on his wife's bed. That they left and on the way, the Accused told him that he had hit the person he found on the wife's bed and wanted to go and make a report to the police. He said that the Accused called him the following day to inform him that the person he had injured had died.
5. The Accused's wife Sally Sigilai (PW2) told the court that the Accused she had separated from her husband (Accused) and was living in her parent's home. That the Accused visited her home on the material date and when she saw him carrying a knife, she feared for her life and fled as she saw him entering her house where she knew the deceased was. She later learnt that the two had fought and the Accused had stabbed the deceased.
6. The Pathologist (PW 4) found the cause of death to be severe haemorrhage secondary to multiple stab wounds. The Investigating Officer (PW 3) wrapped up the Prosecution case.

The Defence Case

7. At the close of the Prosecution case, the court vide its Ruling dated 29th February, 2024 found a prima facie case established against the Accused. He was consequently placed on his defence under section 211 of the *Criminal Procedure Code*.
8. The Accused elected to tender sworn evidence under section 306 of the *Criminal Procedure Code* and called one other witness. He testified that on 27th March 2020, he left his home for the shopping centre and where he met a friend and they decided to go and drink busaa. That he met his father in law in the busaa place who invited him to pass by his home to see his children. That he obliged and upon getting to the father in law's home, he found his (Accused's) wife and children. That shortly he was informed that there was a man in the house where his wife was staying and he went in to ask him why he was in his wife's bed. That the man retorted that she was no longer his wife and a fight ensued in which he ended up stabbing the deceased. The Accused further added that he acted in self-defence and had no intention to kill the deceased.
9. DW2 Esmon Chesimet was the Accused's uncle. He testified that the Accused and Sally Sigilai were married and had four children. That at the time of the incident, they were working on a reconciliation so that she could return to her matrimonial home. DW2 further testified to the Accused's character saying that he was not usually a violent person.

The Law

10. The Accused is charged with the offence of murder. Section 203 of the *Penal Code* provides as follows:-
 203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
11. The above section carries with the ingredients of murder broken down as the fact of and cause of death; the unlawful acts or omissions of the Accused which caused such death; and that the acts or omissions were committed by the Accused with malice aforethought.



12. For the charge of murder to be sustained, it is imperative for the Prosecution to establish these four ingredients. The Court of Appeal in the case of John Mutua Munyoki vs. Republic [2017] eKLR stated in this regard thus: -

“...in all criminal cases, the prosecution has the task of proving its case against an accused person beyond reasonable doubt and it is a burden the prosecution must discharge in relation to each and every ingredient of the particular offence charged.”

13. In R vs. Lifchus (1997) 3 SCR 320, the Supreme Court of Canada defined the standard of proof in the following terms: -

“...the term beyond a reasonable doubt has been used for a very long time and is a part of our history and traditions of justice. It is so engrained in our criminal law that some think it needs no explanation, yet something must be said regarding its meaning. A reasonable doubt is not imaginary or frivolous doubt. It must not be based upon sympathy or prejudice. Rather, it is based on reason and common sense. It is logically derived from the evidence or absence of evidence. Even if you believe the accused is guilty or likely guilty, that is not sufficient. In those circumstances you must give the benefit of the doubt to the accused and acquit because the crown has failed to satisfy you of the guilty of the accused beyond a reasonable doubt. On the other hand you must remember that it is virtually impossible to prove anything to an absolute certainty and the crown is not required to do so. Such a standard of proof is impossibly high. In short if, based upon the evidence before the court, you are sure that the accused committed the offence you should convict since this demonstrates that you are satisfied of his guilty beyond reasonable doubt.” (Underline mine)

14. From the above law and principles, it follows that the issues for determination in this case must fall within the ingredients of the offence. These are:
- i. The fact of death and the cause thereof
 - ii. That such unlawful death was caused by the acts or omissions of the accused.
 - iii. That the accused acted with malice aforethought in committing the crime of murder.

The Death of the deceased.

15. The fact of death was not contested in the trial. For the avoidance of doubt however, I have considered the evidence the Prosecution produced to establish the fact of death. PW1 who was the Accused’s friend and neighbour testified that he had accompanied the Accused to his wife’s home on the material day when the Accused stabbed the deceased. The deceased was rushed to hospital where he died while undergoing treatment. His body was examined by the pathologist on 30th March, 2020 and the Post Mortem report was produced by PW4 who also testified on the cause of death.

The cause of death

16. To prove the cause of death, the Prosecution called PW4 Dr. Ronald Kibet who testified that he conducted a post-mortem on the deceased at the Longisa County Referral hospital on 30th March, 2020. He made the following observations. The body was of a 31year old male. It was well preserved with no post mortem changes. It had multiple injuries including an open fracture on the left upper arm and deformity of the left elbow; stab wounds on the head, left thigh, right thigh; and bruises on the chest. There was also a left chest stab wound measuring 3-4 centimeters with a mild chest depression.



PW 4 found the cause of death to be severe haemorrhage secondary to multiple stab wounds. He produced the post mortem report as Prosecution Exhibit 2.

17. The Post mortem report was expert evidence receivable by the court under Section 48 of the Evidence Act, Cap 80 which provides as follows:-

48. Opinions of experts

1. When the court has to form an opinion upon a point of foreign law, or of science or art, or as to identity or genuineness of handwriting or finger or other impressions, opinions upon that point are admissible if made by persons specially skilled in such foreign law, science or art, or in questions as to identity, or genuineness of handwriting or fingerprint or other impressions.

2. Such persons are called experts.

18. In the case of *Mutonyi vs. Republic* (1982) KLR 203 at 210 the court of appeal held thus: -

“Expert evidence is evidence given by a person skilled and experienced in some professional or special sphere of knowledge of the conclusions he has reached on the basis of his knowledge, from facts reported to him or discovered by him by tests, measurements and the like.”

19. I have considered the findings of Dr. Kibet as recorded in the post mortem form (P.Exh2). I have found no reason to reject his professional opinion on the cause of death. It accorded with the evidence of the witnesses that the deceased had been stabbed. I therefore find it proven beyond reasonable doubt that the deceased died of severe bleeding caused by multiple stab wounds. It is my further finding that the death of the deceased was clearly unlawful.

Whether the Accused was linked to the death of the deceased.

20. Before further analyzing the evidence, I note that PW2 Sally Sigilai was the Accused's wife. She told the court that she was married to the Accused with whom they had four children. That they were married for fifteen years before the Accused sent her away; that they had been separated for two years and was living at her father's home at the material time. She said that she was washing dishes outside her house in her father's homestead when she saw the Accused arrive looking furious and wielding a panga. That the deceased, whom she acknowledged as her friend, was at the time sleeping in her house and when she saw the Accused enter the house, she feared for her life and fled the scene. She learnt later that the deceased had been stabbed.

21. PW1, PW3 and the Accused and his witness DW2 all acknowledged in their statements that PW2 was the wife of the deceased.

22. Section 127(2) of the Evidence Act provides:-

In criminal proceedings every person charged with an offence, and the wife or husband of the person charged, shall be a competent witness for the defence at every stage of the proceedings, whether such person is charged alone or jointly with any other person:

Provided that—

(i) the person charged shall not be called as a witness except upon his own application;

(ii) save as provided in subsection (3) of this section, the wife or husband of the person charged shall not be called as a witness except upon the application of the person charged;



- (iii) the failure of the person charged (or of the wife or husband of that person) to give evidence shall not be made the subject of any comment by the prosecution.
23. It was clear from the above provision that the PW2 ought not to have been called as a witness for the Prosecution. There was no indication that the Accused made an application for her to testify against him. They may have been estranged at the material time, but they were still married. Her evidence could not therefore be lawfully used against her husband because the case did not fall under the exceptions provided under Section 127(3) of the *Evidence Act*. I therefore exclude the testimony of PW2 and consider it duly expunged from the record as I proceed to analyze the evidence.
24. The direct question to be answered from the evidence is whether the Accused was linked to the death of the deceased. Steve Kipkoech (PW1) testified that he knew both the Accused and the deceased as they were both his neighbours. He told the court that he accompanied the Accused to his estranged wife's home and when they reached there he remained outside while the Accused entered the house. That the Accused first entered the grass thatched house then came out and entered the mabati house. That he came out of the house and told him that they should leave and they immediately left.
25. PW1 told the court that while on the way, the Accused told him that he wanted to go the police to report that he had injured someone in the house. That the following day, the Accused called him to tell him not to be around as the police were looking for him because the person he had injured the previous day had died. To the mind of the court, PW1's evidence amounted to a confession (within the meaning of Section 25 and 26 of the *Evidence Act*) by the Accused that he had injured the deceased.
26. The Prosecution did not call any other witness who was at the scene. However, the Investigating officer, PW3 testified that he was instructed by the Sub-County Police Commander to visit the scene soon after the incident. That together with PC Kramuma and APC driver Matagaro, they proceeded to Kapkimolwa location. On arrival, they were directed to the homestead of PW2 who was the ex-wife of the Accused. That they found the lifeless body of the deceased lying on the bed of PW2. Upon inquiry of the villagers, they were informed that there was a quarrel between the Accused and the deceased. PW3 stated that he saw injuries on the deceased's body including deep cuts on the head, the left side of the body, and the thighs.
27. The Investigating officer also testified on the arrest of the Accused. He told the court that the Accused called the police station, with the help of his neighbour, and said that he wanted to surrender himself on the murder case. That the police proceeded to the place where he was at Oljorok village in Narok County where they found and arrested him. That upon arrest, he admitted to having stabbed the deceased.
28. From the above evidence, it was clear that it was the Accused who stabbed the deceased. He is the one who entered the house where they engaged in an altercation and a fight. There was no other person inside that house at the material time. Also the evidence and circumstances of his arrest point to him and no one else. He surrendered himself to the police, and although his admission of the offence to the investigating officer was not a confession as defined by law, the fact that he called to surrender himself was incriminating.
29. Apart from the Prosecution evidence which clearly links the Accused to the offence, the Accused himself in his sworn defence admitted to having stabbed the deceased. He told the court that he had arrived at his father-in-law's home to see his estranged wife and children only to be told by the people who were taking chan'gaa outside that there was a man inside the house in which his wife was living at the time. He stated that when he entered the house, he found a man on his wife's bed and an altercation ensued. The Accused stated that he asked him what he was doing on his wife's bed and he retorted that



she was no longer his wife. That a fight ensued where the deceased tried to stab him with a knife and he wrested the knife from the deceased and stabbed him instead. That thereafter he left the house and they went away with PW1.

30. It is my finding, after a careful consideration of the Prosecution evidence that it was the Accused and no one else who stabbed the deceased leading to his death. This finding is further fortified by the Accused's own admission on oath that he stabbed the deceased inside the home of his wife (PW1).

Whether the Accused by his acts of omission or commission, was culpable for the unlawful death of the deceased.

31. The culpability of the Accused was greatly contested. In submissions dated 1st December 2022 on Case to answer, the Prosecution submitted that it had proved beyond reasonable doubt that the charge of murder against the Accused. That the deceased died from the inexcusable actions of the Accused who, without lawful cause, stabbed and caused him fatal injuries. At the close of the defence case, Mr. Njeru the learned prosecution counsel made final oral submissions. He submitted that the Accused did not act in self-defence as he was the one who went to the house where the deceased was sleeping. That even though the Accused claimed that the deceased had a knife, he should have disarmed him and left the scene. Counsel also discounted the Accused's submission on provocation stating that the Accused went to the scene.
32. The accused filed submissions dated 12th November 2024 through his learned Counsel, Mr. Kadet. On whether the death was unlawfully caused, Counsel submitted that every homicide was unlawful unless there was a justifiable or excusable cause. That from the evidence, it was clear that the accused acted in self-defence and thus justifiably caused the death of the deceased. Counsel revisited the evidence that the Accused went and found the deceased in his wife's bed and was thus provoked. That the victim was the aggressor, as he turned violent when he was asked why he was in the Accused's wife's bed. Secondly, Counsel submitted that the deceased attacked the Accused armed with a knife prompting the Accused to act in self- defence.
33. On provocation, Counsel submitted that any reasonable person would have been provoked if they found a man in their wife's bed. That the standard to be applied by the court was one of 'a reasonable man'. It was the position of the defence that the Prosecution had not rebutted the evidence of provocation and therefore the killing of the deceased was justifiable under section 17 of the [Penal Code](#).
34. From the evidence above, it was clear that the Accused while admitting to having stabbed the deceased, raised two defences. Firstly, he stated that he was provoked when he found a man in his wife's bed. Secondly, he stated that the deceased was the aggressor as he drew a knife to attack him and he acted in self-defence. In order to arrive at a determination on this, I will analyze both the Prosecution and defence evidence together.

Whether the defence of self- defence was available to the Accused.

35. Section 17 of the [Penal Code](#) provides:-

Subject to any express provisions in this Code or any other law in operation in Kenya, criminal responsibility for the use of force in the defence of person or property shall be determined according to the principles of English Common Law.



36. The applicable principles were set out by the Court of Appeal in the case of Victor Nthiga Kiruthu & another vs. Republic (2017) eKLR, thus:-

“The principles that have emerged from these and other authorities are as follows:-

- (i) Self-defence, as the term suggests, is defence of self. It is the use of force or threat to use force to defend one self, one’s family or ones property from a real or threatened attack. Self-defence is therefore a justification in the application of force recognized by the common law.
- (ii) The law generally abhors the use of force or violence, but there are instances when a person is justified in using a reasonable amount of force in self-defence if he or she believes that the danger of bodily harm is imminent and that force is necessary to repel it, meaning that the force must be necessary and that it must be reasonable.
- (iii) It is not necessary, however, for there to be an actual attack in progress before the accused may use force in self- defence. It is sufficient if he apprehends an attack and uses force to prevent it.
- (iv) The danger the accused apprehends however must be sufficiently specific or imminent to justify the action he takes and must be of a nature which could not reasonably be met by mere pacific means.
- (v) What amounts to reasonable force is a matter of fact to be determined from evidence and the circumstances of each case.”

37. Further in Abraham Kibet Chebukwa vs Republic (2020) eKLR, the same court held as follows:-

“.....It is trite law that self-defence is an absolute defence on a charge of murder provided that, the accused person did not in the circumstances of the case apply excessive force. This was reiterated by this Court, in the case of Mokwa vs Republic, [1976-80] 1 KLR 1337 where the Court rendered itself as follows:-

“...the judge correctly directed himself that where a person in the legitimate right of self-defence of person or property uses excessive force or more force than was necessary in the circumstances (always providing that all other elements of self-defence are present) he should not be convicted of murder but of manslaughter.....”

38. The circumstances in this case, were that the Accused and PW2 Judy Sigilai were married. At the time of the offence, they were estranged. She had returned to her maiden home and had been allocated one of the houses in the father’s homestead. PW1 told the court that on the material day, they met the Accused’s father -in -law who asked the Accused to pass by his home to see his children. DW2 was the Accused’s uncle who testified that the couple was in the process reconciling as he had visited the family of the Accused’s wife for reconciliation talks which had borne fruit and the wife was preparing to return to her matrimonial home at the time of the incident. It was proven therefore that the Accused and PW1 though living separately were still married.

39. As already stated, the learned defence counsel urged the court to find that the Accused was provoked because he found the deceased in his wife’s bed. He urged the court to apply the standard of the reasonable man. The learned Prosecutor on the other hand dismissed the argument stating that the



Accused and the deceased were no longer living together and that the Accused went all the way to the father in law's home to commit the offence.

40. I have considered the circumstances under which the Accused stabbed the deceased. It was clear that he went all the way to the wife's home ostensibly on the invitation of his father-in-law who asked him to pass by the home to see his (Accused's) children. He found the wife outside washing dishes and according to his evidence, he learnt from the revelers outside that there was somebody in the wife's house. He went into the house and shortly there was a fight in which the deceased was stabbed. No other person was present to witness what took place before or during the fight.
41. PW 1 however told the court that when they got to the homestead, the Accused first entered the grass thatched house then shortly came out and entered the mabati house while PW1 remained outside with other people. That the Accused emerged from the house stating that "Kwani mtu anotoka kwa kitanda ya bibi yangu?" ("How can someone be getting out of my wife's bed?") and told him that they should leave immediately. That when he asked why they were leaving, the Accused answered that there was alcohol elsewhere but while on the way, he said that he wanted to go and report to the police that he had hit the person whom he found in his wife's bed.
42. PW3, No. 100087 Alice Waithera who was the Investigating officer testified that she was directed by her Sub-County Commander to take up the investigation. That together with PC Kramuna and APC driver Matagaro they proceeded to Kapkimolwa where they were directed to the house of Sally Sigilai (PW2) where they found the deceased lying lifeless on her bed. That she interviewed witnesses who stated that the deceased and the Accused had quarreled leading to the stabbing.
43. From the evidence above, it was clear that no one could testify as to who began the quarrel or who hit who first. The Accused stated in his statement that when he entered the house and found a man on his wife's bed, he asked him to explain his presence and he said that she was no longer his wife and a fight ensued.
44. A critical look at the testimonies above shows clear evidence that the Accused walked all the way to the homestead and went straight into one house, re-emerged and entered the second house where he found the deceased and ended up stabbing him. Conversely, the deceased did not take any active step of going to look for the Accused to attack him. He was the victim.
45. A look at the injuries sustained by the deceased was telling on who was the victim of the attack. According to the Investigating Officer (PW4), she saw deep cut wounds on the deceased's body. The Pathologist (PW4) observed serious injuries on the deceased. He had an open fracture on the left upper arm and elbow which in the mind of the court suggests injuries sustained in defence. He had multiple deep stab wounds on the thighs and chest. If it were true that the Accused was defending himself, only one blow or stab would have stopped the attacker. Multiple stabs and fractures shows that the Accused deployed more than necessary force. The injuries sustained by the deceased, clearly shows that the Accused was the one who was armed, and therefore the aggressor. I am not persuaded that the Accused acted in self-defence when he stabbed the deceased.
46. I find guidance in Ahmed Mohamed Omar and 5 Others vs Republic (2014) eKLR, where the Court of Appeal stated thus:-

".....Some attacks may be serious and dangerous. Others may not be. If there is some relatively minor attack, it would not be common sense to permit some act of retaliation, which was wholly out of proportion to the necessities of the situation. If an attack is serious so that it puts someone in immediate peril, then immediate defensive action may be necessary. If the moment is one of crisis for someone in immediate danger, he may have to avert the danger by



some instant reaction. If the attack is over and no sort of peril remains, then the employment of force may be way of revenge or punishment or by way of paying off an old score or may be pure aggression. There may be no longer any link with a necessity of defence.....” (Emphasis mine)

46. With respect to the defence of provocation, as already stated, learned defence counsel that the Accused lost all self - control when he found a man in his wife’s bed. He submitted that the applicable test was that of ‘a reasonable man’ and urged the court to apply the subjective test. He relied on the case of Peter Kingori Mwangi & 2 Others Vs. Republic 2014 eKLR.
47. From the evidence, the Accused was the one who went to his in-law’s home where the deceased also happened to be. In the mind of the court, it was the Accused who went to seek out the deceased. He seemed to have prior knowledge that the deceased was in the house and was prepared to teach him a lesson ostensibly for sleeping on his wife’s bed. He was enraged that the wife he had sent away back to her father’s homestead may have started a new sexual relationship. It cannot be the case therefore that he went to the homestead and walked into a situation where he found a man in his wife’s house and lost all self-control and stabbed him in the heat of passion. It is my conclusion that the defence of provocation was not available to him.
48. It is my finding that neither the defence of self – defence nor provocation was available to the Accused. I dismiss both defences. He went to his estranged wife’s home to look for the deceased and was the aggressor.
49. It is my finding therefore that the Accused was culpable for the unlawful killing of the deceased.

Whether the Accused acted with Malice Aforethought

50. The last ingredient in establishing a charge of murder is malice aforethought. Section 206 of the [Penal Code](#) provides: -

“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.”

51. In the case of *Roba Galma Wario vs. Republic* [2015] eKLR the court held as follows:-

“For the conviction of murder to be sustained, it is imperative to prove that the death of the deceased was caused by the appellant; and that he had the required malice aforethought.



Without malice aforethought, the appellant would be guilty of manslaughter, as it would mean the death of the deceased during the brawl was not intentional.”

52. In considering whether the Accused had the mensrea for the offence or malicious intention to end the life of the deceased, I find guidance from the case of Nzuki vs. Republic [1973] KLR 171 where the Court of Appeal held that:-

“.....If, on a review of the whole evidence, it either thinks that that intent did not exist or it is left in doubt in respect thereof, the accused should be given the benefit of that doubt. Thus, where on a charge of murder the evidence does not exclude the reasonable possibility that an accused person killed the deceased by an unlawful act but without the intent necessary to constitute legal malice requisite to the proof of that offence, that killing would only amount to manslaughter”.

53. In this case I have found the accused guilty of causing the unlawful death of the deceased. There was no evidence however on the goings on inside the house as there was no witness to the altercation and as to who between the Accused and the deceased was first armed. The evidence created a strong suspicion that the Accused intended to harm, maim or kill the deceased. He had the motive to do so. His wife whom he had cast out of his home, had moved on to get into a new relationship, which irked the Accused. He may also not have had such an intention. In the circumstances, and as the law demands, I resolve the doubt in favour of the Accused. demands. As the element of mensrea is not proved to the required legal standard, I apply the provision of Section 179(2) and substitute the offence of murder with that of manslaughter.

54. I find the Accused guilty of the offence of Manslaughter contrary to section 202 as read with section 205 of the Penal Code. He is accordingly convicted.

Orders Accordingly.

JUDGEMENT DELIVERED, DATED AND SIGNED AT CHUKA THIS 29TH APRIL, 2025.

.....

R. LAGAT-KORIR

JUDGE

Judgment delivered in the presence of the Accused, Mr. Kadet for the Accused, Mr. Mwangangi holding brief for Mr. Njeru for the State. Siele and Muriuki (Court Assistants).

