



**Republic v Yegon (Criminal Case 1 of 2017)
[2025] KEHC 7117 (KLR) (29 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 7117 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL CASE 1 OF 2017**

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

BETWEEN

REPUBLIC PROSECUTION

AND

EDISON KIPKORIR YEGON ACCUSED

JUDGMENT

1. Edison Kipkorir Yegon (Accused) is charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*, Cap 63 Laws of Kenya. The particulars of the offence were that on the 31st day of December 2016 at Youth Farmers Trading Centre in Cheboin Location within Bomet County with malice aforethought murdered Bernard Cheruiyot.
2. The Accused took plea before Muya J on 1st February 2017 and denied the charge. The case went into full trial in which the Prosecution presented 8 witnesses. All the witnesses except the last one testified before Muya J. while I heard the last Prosecution witness. I have, in writing this Judgement, paid due and keen attention to the evidence on record.
3. According to the Prosecution witnesses, the Accused stabbed the deceased at Unit One Bar on the fateful night. PW1 Erick Kibet Ngetich testified that he was at Youth Farmers Trading Centre in the company of Bernard, the deceased. That at around 10.00pm they were drinking at Unit One Bar when one Amos requested him (PW1) to light his cigarette which he obliged. At that point Edison (Accused) came out in the company of Borei proceeded to stab PW1 on the back and also proceeded to stab Bernard (deceased).
4. Amos Kirui Kipyegon (PW2) testified that he was with Kibet Langat outside Unit One Bar when he saw Edison stab Erick (PW1) twice before turning to stab Bernard (deceased) who was then talking to Paul. He heard Bernard scream that he was being killed. That the Accused escaped and they arrested his brother, Paul.



5. Kibet Langat Nelson (PW3) testified that he was with Amos Kirui (PW2) drinking soda at Unit One bar when Edison (Accused) and his brother arrived; and while Erick was lighting Amos' cigarette, Edison stabbed Erick at the back. That Bernard (deceased) asked Paul what was happening and Edison (Accused) stabbed Bernard twice on the stomach. That Bernard screamed that he was dying. Other patrons responded and took both Erick and Bernard to Longisa hospital while Paul, the Accused's brother was arrested and taken to the police station. The Accused escaped and was arrested later.
6. PW4 was Ezekiel Kiprotich Langat. He told the court that he was the owner of Unit One Bar. That on the fateful night there were about ten patrons and he saw Erick, Bernard, Paul and Edison. That while closing his bar he heard shouts from outside and when he responded found Erick and Bernard already stabbed. He found the Accused had already escaped but the patrons arrested his brother Paul. He took the injured to hospital and learnt the next day that the deceased had passed on.
7. PW5 Wilson Kirui identified the Accused as having been a resident of Lekibo Youth Farmers before shifting to Mauche in Njoro, Nakuru. He told the court that he learnt of the death of the deceased on 1st January, 2017, from the deceased's brother Jackson Cheruiyot and made a report to the police.
8. Jackson Kipkurui Cheruiyot (PW6) was the deceased's brother. He identified the body of the deceased for post-mortem at Longisa District hospital mortuary on 6th January, 2017. The post-mortem examination was conducted by Dr. Ronald Kibet (PW7) who formed the opinion that the cause of death was pneumo- hemo thorax as a result of stab wounds.
9. No.78994 Sgt Ronald Momanyi (PW8) was the investigating officer in the case. He received a report on 31st December, 2016 while on patrol duties, around 23.30 hours to the effect that the deceased and one other person had been injured at Unit One Bar. He went to the Longisa Police Patrol Base where he found the Accused's brother Paul Yegon already in custody. He proceeded to Longisa Hospital where he found the deceased already transferred to Tenwek hospital. Before getting to Tenwek hospital, he received a report that the deceased had passed on.
10. PW8 recounted the evidence of the witnesses who were present at the scene. He testified that the Accused escaped but later surrendered himself to the Chief at Mauche in Njoro Sub-County who escorted him to the Mauche Police Patrol Base in Njoro- Sub-County from where he (PW8) picked him on 2nd January, 2017. PW8 further stated that he interrogated witnesses and charged the Accused.
11. In a Ruling dated 25th September 2023, this court made a finding that the Prosecution had established a prima facie case against the Accused and called upon him to make his defence.

Summary of the Defence Case.

12. The Accused testified as DW1 and did not call any witnesses. The Accused told the court that he lives in Nakuru but had visited his parents at Youth Farmers on 31st December 2016 where they had New Year celebrations. That later he went with his brother Paul Yegon to a Bar where they drank and left. That on their way home he heard a scream which he attributed to New Year celebration, ignored it and proceeded home.
13. The Accused further stated that when he woke up in the morning he had many missed calls and later his sister informed him that they were being looked for and upon inquiry, Paul informed him that there was a fight the previous night. He decided to go away fearing mob justice. That when he got to his home, he learnt that the chief was looking for him and also learnt that Paul had been arrested and released. That he went to the village elder and explained himself and was advised to go to the police where he got arrested. He stated that he did not know Bernard Cheruiyot (deceased) at all.



The Law.

13. Section 203 of the [Penal Code](#) under which the Accused is charged provides as follows: -
Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
14. For a charge of murder to be sustained, three elements must be established as follows:-
 - i. Death of the deceased and cause thereof;
 - ii. That the death was occasioned by the unlawful acts or omissions of the Accused; and
 - iii. That there was malice aforethought on the part of the Accused.
15. In the case of *In the case of Joseph Kimani Njau vs. Republic (2014) eKLR* the Court of Appeal stated with respect to the critical elements of the offence and the required standard of proof thus:-

“In criminal trials, both the actus reus and the mens rea are required for the offence charged; they must be proved by the prosecution beyond reasonable doubt. The trial court is under a duty to ensure that before any conviction is entered, both actus reus and mens rea have been proved to the required standard.....”

Prosecution’s Submissions.

16. The Prosecution filed submissions dated 3rd July 2023 at the close of its case. They submitted that they had tendered cogent, consistent and overwhelming evidence against the Accused. That there was no doubt that Benard Cheruiyot was dead as proven by the Post-mortem report and testimony of PW7 Dr. Ronald Kibet which established corpus delicti.
17. On the Accused’s identity the Prosecution submitted that the evidence of PW1, PW2 and PW3 identified the Accused as the person who stabbed PW1 and the deceased. That their evidence was corroborative while the owner of the Bar PW4 also placed the Accused at the scene.
16. With respect to malice aforethought, the Prosecution submitted that the evidence showed that the Accused attacked PW1 and the deceased out of the blues and without any provocation. That by inflicting such serious injuries on sensitive parts of the body, the Accused clearly intended to kill or cause grievous harm to the deceased.

Defence Submissions.

16. The Accused’s submissions dated 11th November 2024, were filed by learned counsel Geoffrey K. Korir. Learned Counsel listed the ingredients of the offence as fact of and cause of death, that the death resulted from the unlawful act or omission on the part of the Accused; and that the Accused acted with malice aforethought. Counsel submitted that the Prosecution had not proved beyond reasonable doubt that it was the Accused who unlawfully caused the death of the deceased. He submitted that key strands of evidence did not connect the Accused to the death of the deceased and that consequently the Accused should be acquitted.

Analysis of the Evidence.

16. I have already set out the evidence and the law. This being a murder case, the issues for determination must necessarily be consonant with the ingredients of the offence. I proceed to analyze both the



Prosecution and defence evidence in the succeeding paragraphs bearing in mind that the Prosecution had the burden of proof on each and every ingredient.

i.Fact of death

21. The fact of death of the deceased was easily proven by the Prosecution. PW1, PW2 and PW3 were all revelers at Unit One Bar which was the scene of the offence. Their collective testimony showed that the deceased was stabbed at the bar and was rushed to the hospital. Wilson Kirui (PW5) and Jackson Cheruiyot (PW6) who were the deceased's relatives identified his body for post mortem at Longisa hospital mortuary on 6th January, 2017. Dr. Ronald Kibet conducted the post-mortem and filled the post-mortem report [Exhibit 1].
22. The evidence above proved the fact of death. I must hasten to add that there was no contestation of the fact of death.

Cause of death

23. As stated above, the prosecution called the evidence of Dr. Ronald Kibet (PW7). He testified that he conducted a post-mortem on the body of the deceased at Longisa mortuary. He observed laceration (2cm) on the right chin, stab wound measuring 5cm on the right lateral side of the neck, penetrating stab wound in the right chest between the 8th and 5th ribs and a stab wound on the left scapular region. There was also a penetrative injury on the upper and lower part of the lung. Dr. Kibet formed the opinion that the cause of death was pneumo- hemo thorax (presence of air and blood in the lungs and chest cavity) as a result of stab wounds. He produced the Post-mortem report as Prosecution Exhibit -1.
24. I accepted the pathologist's evidence and professional opinion on the cause of death. Indeed, it accorded with the witness testimony of PW1, PW2, PW3 and PW4 that the deceased had been stabbed. It is my finding therefore that the deceased died of pneumo- hemo thorax, which in plain language denote complications arising from severe chest injury due to stab wounds. His death was clearly unlawful.

ii.Whether the Accused was identified as the person who caused the unlawful death of the deceased.

25. The Prosecution had to prove that it was the Accused and no one else who inflicted the fatal injury on the deceased. In other words, the actus reus had to be proved.
26. The scene of the incident was Unit One Bar situate at Youth Farmers Trading Centre at Cheboin Location. The incident happened in the night at around 10pm. I must therefore analyse the evidence of identification with circumspection bearing in mind that the conditions of identification may not have been favourable. This caution was succinctly stated by the Court of Appeal in the case of Cleophas Wamunga vs. Republic(1989) eKLR in the following terms:-

“Evidence of visual identification in criminal cases can bring about miscarriage of justice and it is of vital importance that such evidence is examined carefully to minimize this danger. Whenever the case against a defendant wholly depends or to a great extent on the correctness of more identifications of the accused which he alleges to be mistaken, the court must warn itself of the special need for caution before convicting the defendant in reliance on the correctness of the identification.”

27. Erick Kibet Ngetich (PW1) testified that on the material date, he was in the company of Bernard (deceased) having a drink at Unit One Bar, when Amos requested him to use his cigarette to light his. That as he proceeded to light Amos' cigarette, Edison emerged and proceeded to stab him(Erick) then



stabbed Bernard. Cross-examined, Erick stated that the people who were sitting at the shed (variously referred to as Shade Bar) outside the bar were himself, Bernard Ngetich, and Amos. He described Shed Bar as being made of offcuts one a half meters tall with a table at the centre and that the Shade Bar was a few meters away from the door of the Unit One Bar itself. He stated also that there were security lights both outside the bar and on the Shed, though the one on the shed was not on or working. That where he was stabbed was lit and he clearly saw Edison. He said that he had known Edison since their primary school days.

28. PW2 Amos Kirui testified that he was with PW1 at the Shade Bar and that he asked PW1 to light for him his cigarette and that was when Bernard (Accused) stabbed PW1(Erick). That the Accused then turned to Bernard who was talking to Paul and stabbed Bernard. That both Erick and Bernard fell and he heard Bernard scream that he was being killed. Cross - examined, PW2 stated that he was not drunk as he was only taking soda. He stated that several bars were next to each other namely Galaxy, Buffalo, and Unit One. That he was near Shed door when Edison stabbed Bernard about four meters from where he was standing. He stated that he knew Edison and that Edison hailed from Emitiot which was about 4 kilometres from his home in Cheboin.
29. Kibet Langat Nelson (PW3) testified that he was at Unit One Shed Bar with Amos Kirui(PW2) taking soda. That at around 10.00pm, Edison and his brother emerged from the corridor. That at that point, Erick was lighting Amos' cigarette. Edison pulled out a knife and stabbed Erick, then stabbed Bernard who was talking to his (Edison's) brother. That PW3 and PW1 screamed and the patrons responded while the attacker ran away. That the injured were taken to hospital, while the attacker's brother who had not run away was arrested. PW3 stated that he knew Edison as he was his neighbor and that he came with a knife strapped on his loins. He also knew PW and PW2 as well as the accused's brother, Paul.
30. Cross – examined, PW3 stated that he was in the Shed with Amos (PW2) when the Accused emerged from the corridor which leads to Buffalo bar and they appeared drunk.
31. PW4 Ezekiel Langat, also known as Kiprotich, was the owner of Unit One Bar situate at Youth Farmers Trading Centre on 31st December, 2016. That at around 10pm, he alerted the patrons who numbered 10, that he was about to close the bar. That Paul and Edison walked out and after a short while, he heard shouts from outside and on responding, he found Erick and Bernard having been stabbed and he rushed them to hospital and reported to the police. Edison escaped while Paul was arrested and taken to the police station. The following day, he learnt that the deceased had passed on. PW 4 told the court that he knew the Accused as a regular customer whenever he visited his home.
32. In cross- examination, PW4 stated that he did not sell any alcohol to the deceased and Amos (PW2) and that Paul and Edison came to the bar at about 10pm already drunk. He said that both Unit One Bar and Shed Bar are well lit with electricity and Shade had two electric bulbs outside. He clarified that Shade was operated by Unit One Bar. That Bernard and Erick (PW1) did not enter inside the bar and he found them already stabbed.
33. The evidence of PW1, PW2, PW3 and PW4 was corroborative. All four witnesses told the court in their own words that they were present at the scene being Unit One Bar and the adjacent Shade Bar. They were also categorical that there was adequate lighting. More importantly, these were local people who knew each other and were revelers at new year eve at the Unit One Bar and Shade Bar. It was clear from the evidence that PW1 knew both the Accused (Edison) and his brother named Paul. He had known the Accused since their primary school days. He described how they emerged at the corridor. He described that Erick was lighting Amos' cigarette when Edison (Accused) stabbed Erick. He also saw Edison turn to stab Bernard who at that time was conversing with Paul, the Accused's brother.



34. PW2 on the other hand also knew the Accused and his brother. He stated that he was standing 4metres away and witnessed the Accused stab first Erick, then Bernard. PW3 who was with PW2 also testified that he saw the Accused whip out a knife from his loins and proceed to attack the PW1 first, then the deceased. I find the evidence corroborative. The three witnesses saw the Accused whom they knew by name. He was their village mate earlier but had moved to Mauche. They could not have mistaken him as they saw him clearly under the electricity lighting in the Unit One and adjacent Shed Bar.
35. Their evidence was further corroborated by PW4 the bar owner, who testified that the Accused and his brother arrived at his bar around 10pm appearing drunk. He knew him. PW4's evidence was corroborative in placing the Accused at the scene.
36. I am satisfied, after carefully examining the identification evidence above, and after duly warning myself of the danger of relying on identification evidence under unfavourable circumstances, that though the offence occurred at night, the Accused was properly identified and there was no chance of mistaken identity. There was sufficient light and the identifying witnesses were persons who knew the Accused as their former village mate. Indeed, it was a case of recognition not identification which is more reliable. In the case of *Peter Musau Mwanzia vs. Republic* (2008) eKLR, the Court of Appeal expressed itself as follows:-
- “We do agree that for evidence of recognition to be relied upon, the witness claiming to recognize a suspect must establish circumstances that would prove that the suspect is not a stranger to him and thus to put a difference between recognition and identification of a stranger. He must show, for example, that the suspect has been known to him for some time, is a relative, a friend or somebody within the same vicinity as himself and so he had been in contact with the suspect before the incident in question. Such knowledge need not be for a long time but must be for such time that the witness, in seeing the suspect at the time of the offence, can recall very well having seen him earlier on before the incident.....”
37. Further corroborative evidence linking the Accused to the death of the deceased was given by the Investigating Officer, Sgt. Ronald Momanyi (PW8). He testified that he received a report of the incident while on patrol duties and commenced investigations. He learnt that the injured persons had been taken to hospital and that the Accused's brother had been arrested while the Accused had disappeared.
38. PW8 testified that he went to Longisa hospital where he found that the deceased and PW1 had been referred to Tenwek Mission hospital but shortly learnt that the deceased Bernard had passed on. He went and saw the body at the mortuary which had multiple stab wounds. He found PW1 in the ward undergoing treatment for stab wounds. PW8 also visited the scene and saw blood on the ground just outside Unit One Bar and just outside the shed named Shade Bar. The presence of blood stains confirmed the scene of the offence.
39. PW8 further testified that he tested the lights which were in the Bar, in the shed and the security lighting and he found them working. This was of great significance as it corroborated the testimonies of the eye witnesses that there was lighting at the scene.
40. The circumstances of the Accused's arrest also provided circumstantial evidence pointing to his guilt. PW2, PW3 and PW4 told the court that the Accused escaped soon after stabbing the deceased and PW1 and that they arrested the Accused's brother Paul who did not escape. The question is, why did the Accused run away if he had not committed any offence. Secondly, the Investigating officer (PW8) testified that the Accused escaped to his home in Mauche, Nakuru County. He stated that he received a phone call from the Assistant chief of Tachasis Location in Mauche in Njoro Sub-County named



Elijah Kirui that the Accused had surrendered himself to the Chief who in turn had escorted him to Mauche Patrol Base in Njoro. That upon receiving the information, PW8 went and picked the Accused and escorted him to Bomet Police Station for interrogation and subsequent charge.

41. The conduct of the Accused of running away back to his home in Mauche and the act of surrendering himself to the local chief was suggestive of a guilty mind, for why would he surrender himself if he was not the one who stabbed the deceased and PW1? It is my conclusion that he ran away because he was guilty of the offence.

The Accused's defence.

42. The Accused stated in his defence that his home where his parents lived was in Youth Farmers while he lived in Nakuru. He stated that he had visited his sister's home in Mulot, Bomet where there was a celebration for her children then on 31st December, 2016 together with his brother Paul, they visited a neighbour, then went to buy cigarettes around 6pm and to drink in a bar at the shops.
43. The Accused further stated that after drinking, he paid and they left. He said that while crossing the road, they heard screams which they dismissed as new year celebrations. That he went and slept and learnt from his sister the following day that he was being looked for in relation to a fight which happened the previous night. That he decided to go away as he feared mob justice. That he got to his home around 3pm where he learnt that the local chief was looking for him and that shortly the chief went and told him to go to the village elder's house and when he got there he was told to go the police. That he went to the police and was arrested.
44. The Accused stated in cross examination that he ran away not because he was guilty, but because he feared mob justice. That he also surrendered himself because he feared mob justice. He said that the witnesses in the bar could not have known him because he moved out of Youth Farmers area about 30 years ago. He said that he was arrested because he went away to Nakuru and not because he was guilty. He stated that the celebration was in his sister's home in Mulot which is 6kms away from his home in Youth Farmers and that he did not know the witnesses at all and also did not know Bernard, the deceased. He categorically denied that he was armed with a knife stating that he has never walked around armed with a knife.
45. I have considered the Accused's defense. He persisted in his innocence. He denied knowing the deceased or any of the witnesses. His sworn testimony however contained some material disclosures which lend credence to the Prosecution case. Firstly, the Accused admits that his original home before moving to Mauche was Youth Farmers. He also admits having been in the company of his brother Paul, who was arrested immediately after the incident. He admits being in a bar with Paul from around 6pm. Though he does not name the bar, it can be safely concluded that it was Unity One Shade Bar, because the uncontroverted evidence is that that was the place where Paul was arrested. In the mind of the court therefore, the accused placed himself at the scene of the offence.
46. Secondly, the Accused admits to have escaped back to his home in Mauche. He tweaks the narrative to state that he ran away not because he was guilty but because he feared mob justice. I find his statement unbelievable because he might as well have surrendered himself to nearest police station if all he was escaping was mob justice. Considered against the Prosecution evidence, I find the Accused's defense untrue. It does not cast any doubt on the Prosecution evidence linking him to the stabbing of the deceased.
47. It is my finding therefore, after a careful analysis of the evidence, that it was the Accused and no one else who stabbed the deceased causing his unlawful death. His identification was beyond reasonable doubt.



(iii) Whether the Accused in causing the unlawful death of the deceased acted with malice aforethought.

48. For an accused to be convicted of murder, it must be proved that he acted with malice aforethought or had malicious intention to end the life of the deceased. In other words, both the actus reus and the mensrea must be proved beyond reasonable doubt.
49. Section 206 of the *Penal Code* provides that 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) –
 - (d) –
50. In *Nzuki v Republic* [1993] KLR 171, the Court of Appeal stated that malice aforethought can be inferred from the acts of an accused person. The Court elaborated as follows:
- “...Malice aforethought” is a term of art and is either an express intention to kill, as could be inferred when a person threatens another and proceeds to produce a lethal weapon and uses it on his victim; or implied, where, by a voluntary act, a person intended to cause grievous bodily harm to his victim and the victim died as the result...”
51. In the case of *Isaak Kimanthi Kanuachobi v Republic (Nyeri) Criminal Appeal No. 96 of 2007* (unreported) the court held as follows:
- “There is express, implied and constructive malice. Express malice is proved when it is shown that an accused person intended to kill while implied malice is established when it is shown that he intended to cause grievous bodily harm...”
52. In this case, I have found it proven that the Accused stabbed the deceased multiple times. The pathologist (PW7) found multiple stab wounds to the neck and right chest between the 5th and 8th ribs. The stab wound to the neck severed major vessels while the stab wounds to the chest ruptured the lungs. In the mind of the court, the serious injuries showed the intention of the Accused to cause death or grievous harm to the deceased. The Accused also in causing such harm displayed indifference to the consequences of his act. He took off soon after his unlawful act. His actions clearly fall within Section 206 of the *Penal Code*.
53. There was no evidence presented by the Prosecution demonstrating the motive for the Accused’s actions. What was shown was that he entered the bar, headed towards the Shade Bar and stabbed PW1 first before stabbing the deceased. Whereas there was no evidence of motive or prior planning of the attack, the law would fail to protect community if a panga- wielding person would be allowed to



get away with unexplained senseless killing of victims. This was the very reason that the law does not require proof of motive. Section 9 (3) of the Penal Code provides:-

“9(3) Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far as regards criminal responsibility.’

54. Upon arrest, the Accused was subjected to a psychiatric evaluation and he was found mentally fit to stand trial. There was no evidence in the course of the proceedings that he was insane in committing the heinous act. Given a chance to defend himself, he only denied committing the offence and further stated that he did not even know the deceased and any of the witnesses. He feigned ignorance. It is my conclusion that he was of sound mind when he committed the heinous offence.
55. It is my finding, from my evaluation of the evidence as above, that the Prosecution proved the element of malicious intent to the required legal standard. In consequence, I find all the elements proven beyond reasonable doubt.
56. I find the Accused Edison Kipkorir Yegon guilty of the murder of Bernard Cheruiyot as charged. He is accordingly convicted under Section 215 of the Criminal Procedure Code.

Orders accordingly.

JUDGMENT DELIVERED, DATED AND SIGNED AT CHUKA THIS 29TH DAY OF APRIL 2025.

R. LAGAT-KORIR

JUDGE

Judgment delivered virtually in the presence of the Accused, Mr. Ondieki holding brief for Mr. Kipngetich for the Accused, Mr. Mwangangi holding brief for Mr. Njeru for the State. Siele (Court Assistant.)

