



REPUBLIC OF KENYA



**Republic v Chukua (Criminal Case E006 of 2022)
[2025] KEHC 11271 (KLR) (30 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11271 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CRIMINAL CASE E006 OF 2022**

**RK LIMO, J
JULY 30, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

REMLAS OTENG'E CHUKUA ACCUSED

JUDGMENT

1. Relmas Oteng'e Chukua, the accused herein is charged with the offence of Murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars are that on 2/12/2021 at Kiptogot Location, Endebess within Trans-Nzoia County he murdered Wilson Kiptanui Chumba.
2. The accused pleaded not guilty to the offence and the prosecution has presented 7 witnesses to prove their case. The prosecution's case is based on direct evidence and below is the evidence tendered by the witnesses.
3. Bor Sammy Kipyego (PW1) recalled that on 2/12/2012 (hereinafter to be referred to as the material date for ease of reference) he met the deceased and asked him to lend him his motorbike to use. He stated that the deceased agreed and he took the motorcycle to run his errands. He stated that he had agreed with the deceased that he would call him after the errands and that at 8pm he called him and asked him to meet him near a place known as "Furaha B Bar". He stated that he met the deceased at around 8pm and proceeded to a filling station called Russia for fuel. He stated that the petrol station had been closed but because the owner lived nearby, the deceased called him. He stated that the place was well lit and as they waited he saw the accused come to the station and went to where the accused was. He said that he knew both the deceased and accused as great friends.
4. He stated that the accused then demanded his money from deceased and before long a fight ensued. That the accused hit the deceased three times on the forehead using his head. He stated that the deceased



- fell down and started having problems with his breathing. That he let him rest on the ground as he called a friend who got in touch with his family.
5. He stated that he asked another friend to hold the deceased on the motorcycle as he rode the motorcycle home after the accused returned the keys of the motorcycle which he had confiscated. He said that he rode the motorcycle slowly and carefully as the deceased appeared weak as he was being held on the motorbike. He stated that he dropped him at his home and left.
 6. He stated that the following day the deceased's wife told him the situation worsened and that the deceased had to be rushed to hospital. He said that he was later informed that the deceased had passed on.
 7. Reuben Karakacha (PW2) testified that he lived opposite Russia Petrol Station and that on the material date, he heard a commotion at the said station at around 9pm. That upon hearing the commotion he rushed out to find out what was happening and there he saw accused who he referred to as "Rembus" holding the collar of the deceased demanding his money. He said that the accused hit the deceased on the head using his head and the deceased staggered and fell. He said that the deceased appeared completely disoriented as he tried rising up but fell again.
 8. He stated that the deceased was with Sammy (PW1) and that he asked the accused to give him back the motorbike key because he had snatched it and that he eventually gave it back and that he helped PW1 carry the deceased who had urinated on himself and appeared very weak. He stated that he sat at the back of the motorcycle and held him as PW1 rode the boda boda. That the deceased regained consciousness on the way home but was struggling to speak. He stated that they left the deceased at home and his motorbike and left and that on 6/12/21 he heard that the deceased had passed on.
 9. He confirmed that the accused and deceased were friends but used to fight. He recalled that he had previously witnessed them fighting on 3 occasions.
 10. Dorcas Chuma (PW3), the wife to the deceased testified that on the material date at around 9.30pm she was at her house when she heard a motorbike approach and when it reached her compound, she saw her husband the deceased being carried as a pillion passenger. She said that her husband entered the house but when she served him supper he declined.
 11. She stated that the deceased headed to the bedroom and laid on the bed facing up. She stated that she served him milk which he drank and vomited immediately. She stated that they slept and at 3am she tried waking him up but he was unconscious and could not talk. She stated that she went and informed her brother in law who came and took the deceased to Anderson hospital where they were referred to Cherangany Nursing Home. She stated that the deceased had memory lapses and did not recover.
 12. She stated that on 5/12/2021 the deceased passed on. She recalled that when the deceased arrived home he was drunk and that she only learnt later that the accused had attacked him. She confirmed that the two had been great friends. She stated that the deceased did not have health challenges.
 13. Samuel Kiprotich Arusei (PW4) stated that he was a neighbour to the deceased and knew him well. He stated that on 10/12/21 he went to Cherangany Hospital where he identified the body of deceased before post mortem examination. He stated he saw the body and observed a fracture of the skull. He confirmed that the accused was a close friend to the deceased and was surprised that he attacked him.
 14. Edward Kipngetch (PW5) a brother to the deceased also stated that he went to the hospital on 10/12/21 to identify the body of his brother (the deceased). He recalled that he is the one who took him to Cherangany Nursing Home from Anderson Hospital where he had been taken at 4am on the material night. He stated his brother (deceased) suffered a clot in the brain after being hit by the accused



- at Russia Petrol Station. He stated that the deceased had regained consciousness at Cherangany hospital upon treatment and told him that the accused had hit him on the head using his head.
15. Dr. Fred Mwanika (PW6) the doctor who testified on behalf of Dr. Tulel Fredrick who performed autopsy on the body of the deceased testified that he treated the deceased at Cherangany Nursing Home on referral from Anderson Medical Centre. He stated that the deceased was drunk at the time of injury and that upon examination he found that the deceased had bled in the head and was admitted for treatment at the said facility. He stated that the deceased succumbed to the injury on 6/12/2021 and he prepared a report dated 10/3/2022 which he tendered as Pexhibit 1(a). He stated that the doctor who performed post mortem examination found that blood clots in meninges and brain tissue and noted brain hemorrhage adding that the cause of death was brain injury emanating from bleeding in the head or brain hemorrhage. He tendered post mortem report as Pexbhati 1(b).
 16. PC Stephen Aura (PW7) the investigating officer in the case testified that he took over the investigations file from PC Nyaranga Nyarigo who had been transferred to Bondo. He tendered the statement of the investigating officer as Pexhibit 2. He stated in the report he had indicated that the accused ran away after the incident but was later arrested.
 17. When placed in his defence the accused denied the charge. He denied being with the deceased on the material date insisting that he went home after having drinks with the deceased on 1/12/21 and that on 3/12/21 he was informed that the deceased had been taken to Anderson Hospital and later transferred to Cherangany Hospital.
 18. He stated that on 6/12/21 he was informed that the deceased had died and that it was alleged he was the one who had killed him. He said that due to tension he remained in Uganda where he had gone. He stated that he reported to Ugandan police who took him to Chepchoina police station. He said the deceased was his close friend and went to school together.
 19. He stated that he had to remain in Uganda for a month because of tension but denied assaulting the deceased. He stated that the post mortem report did not record any injury on the head.
 20. In his written submissions dated 19/3/25 through counsel, the accused contends that he fled to Uganda because of the threats he faced.
 21. He submits that there is no medical corroboration to show that he had head-butted the deceased on the head.
 22. This court has given an overview of both the prosecution's case and the defence. As observed above the accused person is facing a charge of Murder contrary to section 203 of the *Penal Code*. For a charge of Murder to be sustained in law the prosecution has the burden to ensure that the following ingredients of the offence are established and proved beyond any reasonable doubt.
 - i. Fact of death and its cause.
 - ii. That the cause is linked to unlawful act or omission by the act (Actus reus)
 - iii. Malice aforethought or mens rea.
 23. (i) Fact of death and its cause.

The prosecution has tendered evidence to establish and proof this element through the evidence of PW2, PW3, PW4, PW5 and PW6. PW4 and PW5 went to the morgue and identified the body of the deceased to the doctor who did post mortem examination on



10/12/21. PW6 gave evidence on how he received the deceased and treated him before he succumbed. He tendered a medical report (Pexhibit 1a) detailing how the deceased was managed from the date he was received at the hospital to the date he passed on and the cause of his death. The doctor through the post mortem report (Pexhibit 1b) concluded that the deceased died due to bleeding in the brain (traumatic brain injury). This court finds that flowing from the evidence tendered the death of the deceased was caused by a person. The deceased did not die of natural causes as suggested by the defence. Even if there were no obvious physical injuries on the head, the doctor noted internal injuries on the brain that caused his death. I am satisfied beyond any reasonable doubt that the prosecution has proved the element of fact of death.

24.

(ii) *Actus reus*

The prosecution's case on this ingredient relied on the evidence of eye witnesses namely PW1 (Sammy Kipyego) who was with the deceased at the material time and PW2 (Reuben Karakacha). PW1 stated that he was with the deceased at Russia Petrol Station waiting to fuel when the accused walked into the station and went straight and confronted the deceased demanding for his money before head-butting him on the head 3 times.

25. Reuben Karakacha (PW3) also witnessed the incident and gave the same narrative. The accused raised alibi stating that he was not at the scene at the time and faulted the prosecution for not calling the security guard at the station but PW1 testified that the watchman named Kiriswa died in 2022. In any event, the prosecution's case even without the evidence of the said security guard in my view is solid and overwhelming. The wife to the deceased (PW3) testified that when her husband (deceased) was taken home he was weak and frail. That he refused to eat and that when she gave him milk he vomited immediately. His health deteriorated due to the assault. She woke up at 3am to find him unconscious and had to be rushed to Anderson Hospital before he was taken to Cherangany Hospital where he succumbed. The doctor (PW6) gave a vivid history on how the deceased was received, managed and how he later succumbed. The evidence tendered by the prosecution formed a strong chain linking the accused with the murder.

26. The action or conduct of the accused after the incident indicates that he was guilty and afraid of what he had done. Why did he take off to Uganda where on his account, he hid for almost a month?

27. The statement of the investigating officer (PW3) clearly indicates that the accused escaped after the incident and by the time the investigating officer wrote his statement on 20/12/21 he was still at large. That conduct is indicative of a person who is guilty of wrong doing.

28. In his defence, the accused stated that he ran away due to tension brought about by the incident. He says he went to Uganda police to report but the question is why did he not go to report immediately on 4/12/21 when he crossed over to the other side of the border?

29. This court finds that the prosecution's case has been proved beyond reasonable doubt that the unlawful and aggressive acts of head-butting the deceased by the accused caused him his life.

30.

(iii) *Malice aforethought*

The motive of the murder is clearly established by the evidence tendered by PW1 and PW2. PW1 stated that the accused went straight to the deceased when they were at a petrol station and demanded for his money. PW1 and PW2 both saw him snatch the keys of a motorbike



belonging to the deceased and only returned after seeing that the deceased had fallen down after he had head-butted him 3 times.

31. The State submits that malice aforethought can be inferred under Section 206 of the *Penal Code* contending that the accused intended to cause harm to the deceased by head-butting him. It is apparent that the accused may have been infuriated by the deceased's failure to pay his debt. The deceased was his close friend by his own account and the account of prosecution witnesses but during his defence, the accused failed to take the chance to explain the cause of his fury or lack of patience with his close friend. Had he given a plausible explanation then may be the inference of malice could have been negated. But in the absence of any explanation this court finds that the accused without any good reason went out with a deliberate intention of causing serious harm to the deceased. The provisions of Section 206 of *Penal Code* comes into play to infer that he was ill motivated and I find that the prosecution's case with respect to malice aforethought has been proved beyond any reasonable doubt.

The long and short of this is that the prosecution has proved its case against the accused to the required standard. He is found guilty as charged and he is hereby convicted accordingly.

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

HON JUSTICE R.K. LIMO

KITALE HIGH COURT

Judgment delivered in open court

In the presence of

Ms Rop for the State

Remlas Oteng'e Chukua the accused person

Duke/Chemosop- court assistants

