



**Republic v Silungi (Criminal Case E007 of 2022)
[2024] KEHC 787 (KLR) (31 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 787 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE E007 OF 2022**

DK KEMEL, J

JANUARY 31, 2024

BETWEEN

REPUBLIC PROSECUTION

AND

SAMUEL SIMIYU SILUNGI ACCUSED

RULING

1. The accused herein Samuel Simiyu Silungi faces a charge of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars are that on the 12th day of February, 2022 at Nabuyole village, Chetambe location in Webuye East Sub- County within Bungoma County he murdered Kevin Wafula Makokha.
2. Ruth Lunani (PWI) a minor aged 16 years old testified that the accused herein had been her boy friend who had impregnated her before dumping her. She testified that she later got hitched with the deceased herein and had plans to get married and that on the material date he had travelled from Nairobi to visit her and her family only for the accused herein to murder him on his arrival from Nairobi . She stated that the accused stabbed him on the back with a knife. She later visited Webuye hospital mortuary where she identified the body of the deceased.

On cross – examination, she maintained that the accused was the assailant as she saw him stabbing the deceased from behind.
3. Michael Masoni Lumbasi (PW2) testified that he was guarding Nabuyole Secondary School when he heard screams and that he rushed to the scene and met the accused holding onto his stomach which was bleeding while the deceased lay on the ground. On cross- examination, he stated that he did not see the accused stabbing the deceased and that a knife was recovered from a bag belonging to the deceased.
4. Joseph Mandu Wangusi (PW3) testified that he visited the scene and found the deceased on the ground having been tied with a rope and that he saw the accused herein whip out a knife and stabbed the



helpless deceased and again punched him. He stated that he alerted the police. On cross – examination, he stated that the accused was hospitalized for two weeks.

5. Edward Mulongo Wangolo (PW4) testified that he approached the scene and interrogated the deceased who informed him that he (deceased) had travelled from Nairobi to visit his girlfriend. He added that the accused stabbed the deceased with a knife. He stated that he extracted the knife from the deceased's body and placed it in his bag. He identified the switch blade knife with a red handle (MFI 1) and a bag belonging to the deceased (MFI - 2).

On Cross- examination, he stated that he saw two people fighting and on approaching, he found the deceased already tied up and that the accused stabbed him on the back with a knife.

6. Jackson Nyongesa Masinde (PW5) testified that he heard noise and rushed to the scene where he saw the deceased lying on the ground while the accused held onto his stomach.
7. Samuel Wafula Kilauri (PW6) testified that on hearing noises, he proceeded towards the scene and saw two people fighting and that he managed to identify the accused who hailed from the area while the other one was unknown to him. He tried to separate the combatants to no avail. He added that the accused stabbed the deceased on the back. He finally stated that he learnt that the two had disagreed over a certain girl.

On Cross – examination, he stated that the accused was armed with a knife and that he too had injuries on the waist but that he saw him stabbing the deceased on the back. He stated that the crowd was trying to restrain the accused but who managed to outwit them and stabbed the deceased.

8. Festus Namasaka Weyusia (PW7) testified that on hearing noises he rushed to the scene only to find the body of deceased had been taken by the police. He stated that the deceased was his grandson who had lived with him before moving to Nairobi. He visited the mortuary and saw the body of the deceased.
9. Samuel Simiyu Sirengo (PW8) testified that the deceased was his eldest son and that he visited the moratory where he identified the body which had stab wounds on chest, back and head.
10. Dr Edward Wafula Simiyu (PW9) produced the Post mortem report prepared by Dr Inima Brian with whom he had worked at Webuye District hospital for two years and had been familiar with his handwriting and signatures. He stated that there were multiple bruises on eyes, forehead., right cheek and mouth. There was a penetrating injury on the right chest wall (4th and 5th ribs). There was also a penetrating lung injury as well as torn pulmonary vessels. He also found a pool of blood in the thoracic cavity. He formed the opinion for the cause of death was hemorrhagic shock secondary to injured pulmonary, vessels due to penetrating stab wound. He produced the post mortem report as exhibit 3. On cross – examination, he stated that the stab came from the back and penetrated into the lung.

11. Godwin Khamala Waliama, (PW10) testified that he analyzed some samples brought to the government chemist Kisumu that comprised of a knife with a wooden handle, nail samples and blood in a container as well as the accused's buccal swab for DNA analysis and compassion. He stated that the DNA profile generated from the blood stains on the knife vis avis DNA profile generated from the reference samples is a mixed DNA profile matching the profiles from the accused and deceased. He produced the report as exhibit 4.

On cross – examination, he stated that the report has the genetic markers for accused and deceased as per the samples. That the bloodstains on the knife belonged to the accused and deceased. That he could not tell if the knife was used on both accused and deceased.

12. That marked the close of the prosecution case.



13. I have considered the evidence adduced at this stage of the proceedings. I find the only issue for determination is whether the prosecution has established a prima facie case against the accused to warrant him to be placed on his defence.
14. It is trite law that in criminal trials the burden of proof is always on the prosecution to discharge. A trial court is therefore enjoined by law to determine whether at the conclusion of the prosecution's case there exists a case discharging that burden of proof. Indeed, the prosecution has an obligation to establish the guilt of the accused for the offence charged beyond reasonable doubt. See Woolmington -vs DPP(1935) AC 462.
15. The Burden of proof is also expounded in section 107 of the Evidence Act which provides that whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
16. The prosecution was under duty to prove the essential ingredient of the offence as provided under section 203 as read with section 204 of the Penal Code. The elements are inter alia; the deceased is dead; that the death was caused unlawfully; that there was malice aforethought and that the accused directly or indirectly participated in the alleged crime. Hence, the burden of proof must establish that the evidence so far adduced should be sufficient to sustain a conviction against the accused herein were he to elect to remain silent in defence. See Bhatt -vs Republic (1957) EA 332.
17. In the instant case, the evidence of the pathologist (PW9) confirmed that the deceased died and that the cause of death was haemorrhagic shock secondary to pulmonary vessels injury secondary to penetrating stab wound to posterior chest wall from physical assault. As regards the unlawful death, it is common knowledge that all homicides are unlawful unless authorized by law. It is noted that the deceased had lived a normal life and had travelled from Nairobi to Webuye to join his girlfriend whom he intended to introduce to his family and then travel with her to Nairobi. Hence, his death was unlawful. As regards the accused's involvement and whether there was malice aforethought, it transpired from the testimony of PW1 that she had gone to receive the deceased around St Mathews Secondary School Nabuyole only for the accused herein who had been her former boyfriend to accost the deceased and fatally assault him with a knife. The evidence of PW2, PW3, PW4, PW6 is to the effect that they saw the accused herein stabbing the deceased with a knife. It transpired from the evidence that the accused had been a former boyfriend of PW1 whom he had impregnated and later dumped her only for her to get hitched to the deceased who at the time had intentions of marrying her. It seems the accused was not happy about the deceased snatching his girlfriend and thus plotted to eliminate him. It transpired from the evidence of the witnesses that the accused upon spotting the deceased mobilized the villagers and branded him a stranger and a motor cycle thief and thereafter attacked him. It also transpired that there was an encounter between the accused and deceased and that after the deceased had been subdued the accused stabbed him on the back. The evidence of the government analyst (PW10) is that the bloodstains on the murder weapon (knife) belonged to both deceased and accused. I find the totality of the evidence placed the accused at the scene of crime as the perpetrator. Hence, the evidence adduced at this stage of the proceedings has established a prima facie case against the accused to warrant him to be placed on his defence. Both accused and deceased had been rival lovers of PW1 and hence the animosity between them at the time. It is highly likely that the accused wanted to get rid of competition and hence the incident. Having been placed at the scene of crime, the accused must now offer an explanation as to how the deceased met his death.
18. In the result, it is my finding that the prosecution has established a prima facie case against the accused herein Samuel Simiyu Silungi. I find that he has a case to answer and is now called upon to elect to



conduct his defence in accordance with the provisions of section 306 (2) of the *criminal Procedure Code*.

DATED AND DELIVERED AT BUNGOMA THIS 31ST DAY OF JANUARY 2024

D KEMEI,

JUDGE.

In the presence of :-

Samuel Simiyu Silungi Accused

OIRA For accused

Miss Kibet For Prosecution

Kizito Court Assistant

