



**Republic v Kemei & another (Criminal Case 18 of 2018)
[2024] KEHC 2258 (KLR) (29 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 2258 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE 18 OF 2018
JK SERGON, J
FEBRUARY 29, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

COLLINS KIPROTICH KEMEI 1ST ACCUSED

GEOFFREY KIPNGENO BETT ALIAS PEMBA 2ND ACCUSED

JUDGMENT

1. The Accused were charged with the information of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The Particulars of the information are that on 13th July, 2018 at around 2130 Hours at Brooke Trading Centre, Ainamoi Sub-County within Kericho County, the accused murdered Caleb Kipkirui Korir.
2. The 1st accused person entered into a plea bargaining agreement and pleaded guilty to the lesser offence of manslaughter and therefore pursuant to the plea bargaining agreement the 1st accused person was convicted and subsequently sentenced to serve eight (8) years imprisonment.
3. The 2nd accused person pleaded not guilty to the charge of Murder. The case proceeded to hearing whereof the prosecution called six (6) witnesses to prove its case.
4. Bernard Kipkoech Ruto, Pw. 1 a boda boda operator from Brooke Area identified the accused on the dock and also stated that he knew the deceased. Pw. 1 testified that on the material day at around 9:30 pm he was in Kericho (Town) when his friend Benard Muiruri called him and informed him that the accused had stabbed the deceased. Pw. 1 stated that he proceeded to Kericho District Hospital and found the deceased had succumbed to his injuries and having been stabbed on the right side of the stomach. Pw. 1 stated that he and several friends moved the body of the deceased to Siloam Mortuary.



5. On cross examination, Pw. 1 confirmed that he did not witness the incident. He said that the incident occurred in Brooke whereas he was in Town.
6. On re-examination. Pw. 1 further confirmed that he was informed that both Kiprotich and Pemba had stabbed the deceased.
7. Billy Mutai, (Pw. 2) a mason identified the accused in the dock and also stated that he knew the deceased. Pw. 2 testified that on the material day, he was at Migingo at Brooke when he saw some people fighting and further that Cheruiyot stabbed the deceased on the back and escaped on a motor cycle whereas the deceased was taken to hospital. He stated that he did not see the 2nd accused person at the crime scene.
8. On cross examination, Pw. 2 confirmed that on the material day he witnessed a scuffle and further that Kiprotich the (1st accused) had a knife and proceeded to stab the deceased.
9. Kigen Kiprotich Daniels (Pw. 3) a business man who stays at Brooke, identified the accused in the dock and also stated that he knew the deceased. Pw. 3 testified that on 17th July, 2018, he identified the body of the deceased at Siloam Mortuary, the body had a stab wound from the back to the lungs.
10. Dr. Wesley Rotich, (Pw. 4) a medical officer who works at Kericho County Referral Hospital testified that on 17th July, 2018 he conducted an autopsy on the body of the deceased and formed the opinion that the cause of death was massive internal bleeding due to penetrating chest trauma caused by a sharp object. Pw. 4 prepared and signed the post mortem report and produced it as P.Exh. 1.
11. On cross examination, Pw. 4 confirmed that the deceased had a stab wound at the back penetrating to the chest, and the stab wound caused bleeding inside the chest cavity which caused the death of the deceased.
12. Ronald Kipkemoi Cheruiyot (Pw. 5) a farmer who stays in Bomet identified the accused on the dock and also stated that he knew the deceased. Pw. 5 testified that on the material day he was out playing pool and drinking with friends when a scuffle ensued, the accused person who was in a mob assaulted him and the deceased tried to intervene. Pw. 5 testified that soon thereafter he saw the deceased fall down and when he went near where the deceased was, Pw. 5 saw him bleeding from his back as he had been stabbed. Pw.5 further testifies that he put the deceased on a motorcycle and he was taken to hospital whereby he succumbed.
13. On cross examination, Pw. 5 confirmed that on the material night he was assaulted by the accused who was in a mob of people, he therefore did not see who stabbed the deceased rather he was informed that Kiprotich (1st accused) had stabbed the deceased. Pw. 5 conceded that on the material night he was drunk but he was not intoxicated.
14. ASP Amos Namasaka (Pw. 6) police force number 233974 the current Acting Deputy OCPD of Central Police Division, previously the OCS Kericho Police Station. Pw. 6 testified that on the material day at 9:30 pm he received a call from a member of the public at Brooke Area, that there was an incident whereby someone was stabbed with a knife and was in serious condition. He testified that on 14th July, 2018 he visited the crime scene and the hospital and was informed that the deceased had succumbed and commenced investigations. He further testified that he recorded several statements from witnesses who linked the accused with the murder of the deceased and further that the accused was subsequently apprehended several days later with another not before Court and proceeded to charge the accused with the offence of murder.



15. On cross examination, Pw. 6 confirmed that he recorded evidence from various witnesses that implicated Collins Kiprotich Kimei as the assailant and further implicated the accused herein by placing him at the crime scene.
16. Mr. Musyoki the Learned Prosecutor in the Office of the Director of Public Prosecution stated that the co-accused pleaded guilty of manslaughter and was sentenced to serve eight (8) years imprisonment.
17. Section 211 of the [Criminal Procedure Code](#) was complied with, the accused opted to give an unsworn statement and called no witnesses.
18. Geoffrey Kipngeno Bett, (Dw.1) elected to give an unsworn statement and testified that on the material day he was at his farm plucking tea, took his cows to the river and in the evening proceeded to Brooke Shopping Centre to shop for supplies. Dw. 1 stated that he went back home, had a meal and retired to bed and on the following day woke up and proceeded with his normal duties. Dw.1 stated that he was shocked on 7th August, 2018 when police officers came to arrest him alleging that he had murdered a person, he vehemently denied having committed the offence to no avail. Dw. 1 stated that he overheard witnesses saying that Collins Kiprotich had stabbed the deceased herein.
19. At the close of the defence case, the defence was given fourteen (14) days to file their submissions.
20. The sole issue for consideration is whether the prosecution proved its case against the accused beyond reasonable doubt.
21. The offence of murder is provided for in Section 203 of the Penal Code that provides as follows; “Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.” In [Republic v Andrew Omwenga \[2009\]](#) eKLR the court held: “It is clear from this definition that for an accused person to be convicted of murder, it must be proved that he caused the death of the deceased with malice aforethought by an unlawful act or omission – there are therefore three ingredients of murder which the prosecution must prove beyond reasonable doubt in order to secure a conviction. They are: (a) The death of the deceased and the cause of the death, (b) That the accused committed the unlawful act which caused the death of the deceased and (c) That the accused had the malice aforethought.”
22. The accused in this case was charged with the offence of murder contrary to section 203 of the penal code which defines murder as the unlawful killing of a person with malice aforethought.

(a) Death and Cause of Death

23. In this case the death of the deceased person is not disputed, several witnesses testified that on the material day there was a scuffle, the deceased was stabbed and subsequently succumbed to the fatal injuries sustained in the scuffle. Pw. 4 a medical officer conducted an autopsy on the deceased and formed the opinion that the cause of death was massive internal bleeding due to penetrating chest trauma caused by a sharp object. Pw. 4 prepared and signed the post mortem report and produced it as P.Exh. 1.

Whether the accused committed the unlawful act which caused the death of the deceased

24. I have keenly scrutinised the prosecution witness accounts and I find that there is no prosecution witness who witnessed the accused person assaulting the deceased, Pw. 2 on cross examination confirmed that on the material day he witnessed a scuffle ensue and further that Kiprotich not the accused was in possession of a knife and proceeded to stab the deceased. Pw. 6 on cross examination confirmed that he recorded evidence from various witnesses that implicated Collins Kiprotich Kimei



as the assailant, the co-accused herein, who pleaded guilty to lesser charge of manslaughter pursuant to a plea bargaining agreement. I have considered the accused persons' defence. I find that the prosecution does not have a cogent case against Geoffrey Kipngeno Bett alias Pemba. Consequently, I am not satisfied that the prosecution proved beyond reasonable doubt that it was the accused person who unlawfully caused the deceased's death. In this regard, I wish to associate myself with the holding of Mrima J. in the case of [JOO v Republic \[2015\]](#) eKLR, that:- “ It is not lost to this Court that the offence which the Appellant faced was such a serious one and ought to be denounced in the strongest terms possible. However, it also remains a cardinal duty on the prosecution to ensure that adequate evidence is adduced against a suspect so as to uphold any conviction. The standard of proof required in criminal cases is well settled; proof beyond any reasonable doubt hence this case cannot be an exception. This Court holds the view that it is better to acquit ten guilty persons than to convict one innocent person. ”

25. Accordingly, I find that the prosecution has not proven its case against the accused beyond reasonable doubt and on this premise, I find the accused person not guilty for the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#). The accused person; Geoffrey Kipngeno Bett alias Pemba is hereby acquitted. He is hereby set free forthwith unless lawfully held.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 29TH DAY OF FEBRUARY, 2024.

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J.K. SERGON

JUDGE

In the presence of:

C/Assistant – Ruttoh

Prosecutor – Mr. Musyoki

Accused – Present in Prison.

No appearance for the Accused

