



**Republic v Langat (Criminal Case 22 of 2019)  
[2024] KEHC 4125 (KLR) (26 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4125 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL CASE 22 OF 2019**

**HI ONG'UDI, J  
APRIL 26, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**GEOFFREY LANGAT ..... ACCUSED**

**JUDGMENT**

1. Geoffrey Langat the accused herein stands charged with the offence of murder contrary to Section 203 as read with Section 204 of the penal code. The particulars being that the accused on the 27<sup>th</sup> day of March 2019 at Keringet Centre in Kuresoi Sub County within Nakuru County murdered Vicky Kenduiywa.
2. The accused denied the charge and the matter proceeded to full hearing with the prosecution calling a total of five (5) witnesses.
3. When placed on his defence the accused elected to give a sworn statement of defence without calling any witness. Both the prosecution and defence counsel elected to rely on their submissions filed on no case to answer. The said submissions are dated 14<sup>th</sup> November, 2023 and 1<sup>st</sup> December, 2023 respectively.
4. A summary of the prosecution case is that PW2 Kipngetchi Enock a bar owner was at his bar at Keringet on 26<sup>th</sup> March, 2019 at 6.30 p.m. attending to his customers when the accused and the deceased arrived. The accused ordered for a guinness and tusker alcohol. The two customers sat together holding each other. The accused then asked for food and was directed to a butchery where he went to make an order. When the meat was brought the accused went for more alcohol at the bar. As they left for the lodging at 10.30 p.m. they took more alcohol and even sent the watchman for more. The accused came and paid his bill of Ksh.1,980/= and left. PW2 closed his business around 11.30 p.m.
5. PW1 Mercy Chepng'eno worked at the subject lodging. On 27<sup>th</sup> March 2019 she reported on duty after 9.30 a.m., and learnt that the occupants of Room 7 had not woken up, while all others were up. She



- knocked on their door but they never responded. The watchman and owner of the plot were called and the police were notified. From the window of the room she was able to see two people (male & female) sleeping on the bed and they had beer bottles. She also saw blood on the floor, she was however not able to do anything.
6. PW2 further testified that on 27<sup>th</sup> March, 2019 9.30 a.m. when he reported at his bar the watchman informed him that the accused and deceased had not woken up. Together they went to the lodging and knocked on the door twice but, there was no response. On checking through the window (as the curtain was not closed) he saw two naked people. The accused had blood stains on the neck and there was blood at the edge of the window. The accused's legs were on the deceased's body, while the deceased lay on her back.
  7. Together with Wesley the owner of the lodging, plus others they went to the police station and returned with the OCS and police officers. Photos of the scene were taken and the door of the room was forced open. Inside the accused held a knife in his right hand, as well as a phone in his left hand. The deceased had died but the accused was still alive and was rushed to hospital.
  8. In cross examination PW2 stated that the accused's injury was on the left side of the chest, and it was no longer bleeding. Things in the room were scattered everywhere and the tables were on the floor.
  9. PW3 Walter Kiprop Koech worked at Set Kibor bar, which had lodgings. On 26<sup>th</sup> March, 2019 he was on duty having reported at 6 p.m., when he met the accused who wanted a room. He allocated him Room No. 7 and he paid Kshs 250/= before leaving to go and drink at the club. He returned at around 10.00 p.m. with a lady called Vivian whom he said was his girlfriend. Accused did not have his ID card but gave him his telephone number. They returned to the club and came back later, to sleep. He asked for guinness and tusker beers which he gave him together with tissue and soap, for the room. The next morning at 9.00 a.m. he was notified that the people in Room 7 had not woken up. The rest of his evidence on what happened is similar to that of PW1 and PW2.
  10. In cross examination he said the accused who was unconscious had three (3) stab wounds on his left side of the chest, while the deceased had one injury on the back. He saw three (3) guinness and three (3) tusker beer bottles in the room. He stated that it was the accused who was taking the guinness. He further stated that when the accused and deceased arrived they were not that drunk, and he never saw the accused with a knife. He did not also see the deceased with a handbag, but when the room was opened there was a lady's handbag.
  11. PW4 Brian Kiplangat Ngeno a boda boda rider confirmed having taken the accused and Vicky the deceased to Keringet, Olenguruone stage on 26<sup>th</sup> March 2019. He left them there after he was paid. The next day he learnt of the deceased's death and the accused's illness. He stated that when he carried the two customers they were carrying nothing. He added that he knew both the accused and deceased prior to the incident.
  12. PW5 Dr Wangara Rodge Namisi produced the post mortem report (P Exhibit 2) on behalf of Dr. Emma Ngarama. The doctor found her to have seven (7) stab wounds, her chest wall muscle had stab wounds, and two (2) liters of blood in the cavity. The cause of death was hemorrhage shock due to multiple chest injuries.
  13. A discharge summary in respect of the accused was produced as Exhibit 3 by the consent of the prosecution and defence. It shows that the accused had self inflicted stab wounds following a quarrel with the partner.
  14. In his sworn defence the accused said he is married with four (4) children. He stated that on 27<sup>th</sup> March 2019 he had left home for the shops where he went to take alcohol. He was then called by the deceased



- whom he knew. They later met and agreed to go for his ID card at Keringet at around 3 p.m. All this time he was drinking alcohol. The deceased on his instructions came with a rider and they left for the ID card place, and were told to go back the next day as it was late.
15. After going to the barber's shop they went to have a meal at a hotel, after which they went to take alcohol at a bar. Thereafter they went to a lodging where they continued drinking. He did not know how he reached the lodging. All he remembered was finding himself in hospital.
  16. In cross examination he admitted the deceased being his lover. He further admitted to having been taking changaa from morning to 3 p.m. on the material day. The injury he had was on the chest and had been inflicted by a knife. He gave the deceased money to pay for the room. He said the deceased had a bag and a masai lessa. He could not remember if they locked the door to the room.
  17. In the submissions filed by counsel for the prosecution Mr Kihara dated 14<sup>th</sup> November, 2023 on no case to answer counsel submitted that the evidence adduced was circumstantial. He stressed that both the deceased and accused were in Room No. 7. The deceased was stabbed 7 times and the room was locked from inside, making the door to be broken.
  18. On circumstantial evidence counsel relied on the cases of DPP Kiborne 1973 AC 729; Mishi Tulo v R Cr Appeal No. 30 of 2013; Sande v R [2003] eKLR and Abanga alias Onyango v R Cr Appeal No. 32 of 1990. Counsel submitted that whatever happened in the Room was only known to the accused and deceased. Secondly it was not shown how the handbag got into the room since none of the witnesses saw the deceased enter the room with it.
  19. Counsel in reference to Section 206 of the Penal Code on malice aforethought submitted that the accused's guilt can be deduced from his attempt to take away his life after stabbing the deceased seven (7) times.
  20. The accused's submissions were filed by Mr Wambeyi Makomere and are dated 1<sup>st</sup> December, 2023. Counsel submitted that there is no dispute that the deceased's life was lost and the loss occurred while she was in the accused's company. Further that both the accused and deceased had visible injuries. Counsel pointed out that the photos taken at the scene and which could have assisted the court were not availed. Further that the phone, knife and handbag alleged to have been at the scene were not produced. He submitted that the witnesses who were at the scene of crime and the investigating officer never testified.
  21. Counsel further submitted that when the incident occurred both the accused and deceased were under the influence of alcohol. The element of ill intention was therefore not proved as parties were out of their senses. Counsel therefore raised the following questions;
    - i. Might it be that the deceased carried and concealed a knife in her bag?
    - ii. Could it be said that the deceased might have attacked the accused person?
    - iii. Might the accused have acted in self-defense?
    - iv. Why did the accused not escape if at all he knew he had allegedly committed a crime?
    - v. Who indeed can tell us what actually took place in the said room 7?

### **Analysis And Determination**

22. I have carefully considered the charge, the evidence and the submissions by both parties and the law. The main issue for determination is whether the charge of murder has been proved against the accused person.



23. Murder is defined under section 203 of the Penal Code as follows:
- “ Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
24. From the above definition three ingredients must be established for the charge to be proved. These are;
- i. The fact of death.
  - ii. The “actus reus” (the act of killing).
  - iii. The “mens rea” (the intention to kill).
25. On the first ingredient the evidence is by PW1 – PW5. All these witnesses confirm that the deceased lost his life. Therefore the fact of death is not in dispute. Dr. Emma Ngarame who conducted the postmortem found the cause of death to be hemorrhage as a result of multiple penetrating chest injuries. The postmortem report was produced as P Exhibit 2.
26. The second element is the actus reus which is the act of killing. From the evidence adduced the accused and deceased had been seen together during the day upto late on the night on 26<sup>th</sup> March, 2019. PW4 a motorbike rider dropped them in Keringet centre Olenguruone stage on the said date at around 3 p.m. PW2 received them at his bar on the same day at 6.30 p.m. while PW3 received them at the lodging which is the scene of incident on the same evening and later at around 10.00 p.m. when they went to Room No. 7 which had been allocated to them.
27. The accused in his sworn defence admitted to having been with the deceased from around 12.30 p.m. until late in the night, though he alleges not to understand how he reached the lodging. The reason he gave for this is his state of drunkenness.
28. There is no dispute that the deceased and the accused were booked in Room No. 7 at Set Kibor bar by PW3 on the night of 26<sup>th</sup> March, 2019. The accused paid Ksh.250/= for the room. They went to the room which was then locked from the inside. The next morning the two persons did not check out as expected by 9.00 a.m. A further check through the window revealed the deceased’s body lying on the bed while the accused lay there unconscious. The room had to be broken into by the OCS and other police officers in the presence of PW2, PW3 among others. The accused was then rushed to the hospital.
29. It is unfortunate that the investigating officer and the scenes of crime officer who allegedly took photos of the scene did not appear in court to testify. Is this fatal to the prosecution case?
30. On the other hand, there is the evidence that the accused and deceased were alone in the said Room 7. What is it that happened to both of them leading to the deceased’s brutal death? The accused claims to have been so drunk that he had no idea how he landed at the lodging and neither could he remember what happened in the room.
31. A discharge summary dated 4<sup>th</sup> April, 2019 in respect of the accused was produced by consent of the prosecution and defence, as the Exhibit 3 notes taken in it show that the accused told the doctor how he had stabbed his partner to death after a quarrel. The document (Exhibit 3) shows that the accused exhibited some bizarre behavior. The accused was taken for mental assessment on 10<sup>th</sup> April, 2019 at the Provincial General Hospital, Nakuru. If the defence had any issues with this Exhibit 3 they would not have produced it.



32. Upon examination Dr. Njau J.W. the Consultant Psychiatrist found the accused to be mentally sound and fit to stand trial. The said report was filed in court on 17<sup>th</sup> April, 2019.
33. The accused claims to not have known what was happening around him because of his drunken state. The witnesses who interacted with him on 26<sup>th</sup> March, 2019 i.e. PW1 – PW4 disapprove all this. Infact PW3 who interacted with the accused before he left for Room 7 with the deceased confirms that the accused was not too drunk as he claims. The two love birds went to the room with two bottles of alcohol (Tusker and Guinness). They then locked the door behind them.
34. From my analysis, I find the above evidence to be purely circumstantial. It must therefore be tested to see if it meets the standards for basing a conviction on it. In the case of *Sawe v Republic* [2003] KLR 364. The Court of Appeal held as follows;
1. In order to justify on circumstantial evidence of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.
  2. Circumstantial evidence can be a basis of a conviction only if there is no other existing circumstance weakening the chain of circumstances relied on.
  3. The burden of proving facts which justify the drawing of this inference in exclusion of any other reasonable hypothesis of innocence is on the prosecution. This burden always remains with the prosecution and never shifts to the accused.
35. Further in *Nyakundi v Republic* [2003] KLR 700 the Court of Appeal held thus;
1. This court was not satisfied that the evidence of the only witness which the judge relied on to convict the appellant left no doubt in the entire case as to lead to a conclusion that the inculpatory facts were incompatible with the innocence of the appellant and incapable of explanation upon any other hypothesis other than that of guilt.
  2. There was no proper evidence to conclude that the accused was carrying a panga with which he had killed the deceased.
36. In *Nzivo v Republic* [2005] I KLR 699 the Court of Appeal held thus;
5. “In a case dependent on circumstantial evidence in order to justify the inference of guilt the incriminating facts must be incompatible with the innocence of the accused or the guilt of any other person and incapable of explanation upon any other reasonable hypothesis than that of his guilt (Sarkar on Evidence – 10th Edition P 31). It is also necessary before drawing the inference of the accused’s guilt from circumstantial evidence to be sure that there are no other coexisting circumstances which would weaken or destroy the inference.”
37. Mr Kihara for the prosecution in his submissions stated as follows;
- “The guilt of the accused can be deduced when he tried to take his life after stabbing the deceased seven times. He did not manage to commit suicide as he was not successful as the pain was greater and he was unable to endure, he pleaded to be taken to hospital. Could the accused have planned from the onset to book a room and accomplish this?”
38. Is the circumstantial evidence adduced sufficient to sustain a conviction? It is not disputed that after the accused and deceased entered Room 7 there was nobody else who joined them. Whatever happened to the deceased was done in the presence of the accused.



39. This court expected him to explain what took place leading to the deceased's death. Instead he stated that he did not know what happened to her or even to himself because of being too drunk. The fact that the photos taken were not produced and the investigating officer did not testify is not sufficient reason to ignore the strong evidence by the prosecution witnesses (PW1 – PW2) which is very clear and straight forward.
40. The circumstantial evidence adduced herein is so strong. The accused was the last person to be seen with the deceased while alive. His failure to give an account of what happened clearly shows that he was hiding that crucial information. The evidence clearly points to the accused and him alone as the person who killed the deceased for reasons best known to him.
41. I therefore find him guilty and convict him of the charge of murder as charged.
42. Orders accordingly.

**DELIVERED, SIGNED & DATED THIS 26<sup>TH</sup> DAY OF APRIL, 2024 IN OPEN COURT AT NAKURU.**

**H. I. ONG'UDI**

**JUDGE**

