



**Republic v Juma & another (Criminal Case E013 of 2023)
[2024] KEHC 6255 (KLR) (31 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6255 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL CASE E013 OF 2023
WM MUSYOKA, J
MAY 31, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

DAVID ELUNG'AT JUMA 1ST ACCUSED

DENIS ESIKE 2ND ACCUSED

RULING

1. The accused herein, David Elung'at Juma and Denis Esike, are charged with murder, contrary to section 203, as read with section 204, of the Penal Code, Cap 63, Laws of Kenya. The particulars are that on 30th June 2023, at Akichelesit Sub-Location, Kekalet Location, Teso North Sub-County, within Busia County, they murdered Jim Etyang Juma.
2. 7 witnesses gave evidence in the matter. None of them testified to have had witnessed the accused persons assaulting the deceased or doing something to him which could have caused his death. PW1, Oketch Gregory, was a medical officer, who conducted post-mortem on the remains of Juma Beda Etyang. PW2, Rufas Stella Juma, was a sister of Etyang Juma, and of the accused. She was not at home, when it happened, she only heard that Etyang Juma had had a motorcycle accident. PW3, Bramwell Esiromo Juma, was a brother of Etyang Juma and the accused. He was at his house sleeping on the material night, and did not witness anything. He only got to see Etyang Juma badly hurt the following morning, and heard that he had had a motorcycle accident. PW4, Ken Obukol, was a brother, of both the accused and Juma Etyang Jim alias Beda. He said that he did not witness the assault, but came home and found Juma Etyang Jim alias Beda badly injured, saying that he had been involved in a motorcycle accident, and he took him to hospital. PW5, Mercy Elung'at, was a nurse at St. Mary's Mission Hospital, Ang'urai. She attended to an Etyang Juma, who gave a history of having been stoned by people known to him. PW6, No. 55706 Police Sergeant Samson Kibiwott, was the investigating officer. PW7, Godwin Khamala Waliama, was a government analyst.



3. The parties did not submit.
4. The principal elements of murder are proof of the death, the cause of it, the role of the accused person in the causation, and whether, if the accused caused the death, he did it with malice aforethought.
5. On the first issue, of whether the deceased died, I have to contend with who the accused person really was. The charge identifies the deceased as Jim Etyang Juma. The pathologist, PW1, conducted post-mortem on the body of a person who was identified, in the post-mortem form by the police, as no relatives are mentioned as having been present at the post-mortem, as Juma Beda Etyang. The name given by PW1 tallies with that by the investigating officer, PW6, and the government analyst, PW7. The other witnesses, however, gave different names of the person who had died, the names being Jim Etyang Juma, Etyang Juma, Juma Etyang Jim and Juma Beda Etyang. PW4 said that the full name of the deceased was Juma Etyang Jim, adding that he was also known as Beda. The investigating officer said that all those names, Jim Etyang Juma, Etyang Juma, Juma Etyang Jim and Juma Beda Etyang referred to the deceased.
6. Should I make much of the lack of clarity on the names of the deceased? I believe I should. Identity is at the core of everything. The accused stand charged with killing a person identified as Jim Etyang Juma, according to the charge sheet. Yet, the witnesses presented by the prosecution refer to other names, Etyang Juma, Juma Etyang Juma, Juma Beda Etyang and Juma Etyang Jim. Indeed, none of the prosecution witnesses identified the deceased by the name used in the charge sheet, Jim Etyang Juma. The order of names is critical, for therein lies the identity. A change in the order of the same names could be reference to a totally different person. Every person in Kenya has his official name, borne in a national identity card, issued by the State. The deceased, the subject of these criminal proceedings, was said to be an adult, in his 50s, and a former police officer. He must have had a national identity card, for purposes of determining his identity. Such a document could have been produced to clear up the matter. If it had been returned to the State, then a death certificate, which is, as a matter of common knowledge, usually issued in exchange of the national identity card, should have been produced. As it is, it is not clear whose death is the subject of these proceedings, that of Jim Etyang Juma, Etyang Juma, Juma Etyang Jim or Juma Beda Etyang. It was not enough for the investigating officer to casually state, at the witness stand, that all these names referred to the deceased. Documentary evidence should have been adduced. On this, the prosecution fell short. The burden was on it, to prove that the person who allegedly died was Jim Etyang Juma.
7. The above notwithstanding, there is no evidence that the person named in the charge sheet, Jim Etyang Juma, died, for none of the witnesses presented talked about that person. PW1 confirmed that the person whose body he did post-mortem on, Juma Beda Etyang, died of severe blunt trauma, he expressed no opinion on what might have caused that trauma. The nurse, PW5, treated a person known as Etyang Juma, who said that he had been stoned, but opined that the injuries she noted could have also been caused in an accident.
8. The cause of death of Jim Etyang Juma cannot be linked to the accused, for there is no evidence in the first place that such a person existed, and that he died. If the person who died was Etyang Juma, the evidence on him was given by PW2, PW3 and PW5. PW2 and PW3 were his relatives, they said that he had had a motorcycle accident. PW5 was a nurse, who attended to him. She said that he said that he was stoned, but no names were mentioned, of the persons involved in the stoning. The person that PW4 testified on, as the deceased person, and as the person he took to hospital, was injured, according to him, by his own motorcycle. The person that PW1 and PW7 testified on, died of severe blunt trauma, according to PW1, but PW1 did not express any opinion on what might have caused that trauma. The forensic analysis conducted on the items given to PW7, by PW6, had no traces of blood linked to the



accused. Overall, no evidence of any kind was led by the prosecution to link the accused to the death of either Jim Etyang Juma, or Etyang Juma, or Juma Etyang Jim alias Beda, or Juma Beda Etyang. None of the witnesses testified to seeing the accused harm or assault or do anything that would have caused the death of the said person or persons.

9. There is no direct evidence against the accused persons, pointing to them as the persons who did anything to the deceased, in the charge sheet, or any of the other persons mentioned by the witnesses, that led to his death or their deaths. The burden lies with the prosecution, to establish beyond reasonable doubt that the accused caused the death of the deceased. There is no concrete evidence. There is no circumstantial evidence either. In the circumstances, I find and hold that no prima facie case has been established against the accused persons, to warrant their being put on their defence.
10. As no *prima facie* case has been established against the accused persons, I shall acquit them, under section 306(1) of the [Criminal Procedure Code](#), Cap 75, Laws of Kenya. They shall be set free from remand custody, if they still are in remand, unless they are otherwise lawfully held. It is so ordered.

RULING IS DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, THIS 31ST DAY OF MAY 2024

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Appearances

Ms. Chepkonga, instructed by the Director of Public Prosecutions, for the Republic.

Mr. Were, Advocate for the accused person.

