



**Republic v Silungi (Criminal Case E007 of 2022)
[2024] KEHC 6171 (KLR) (30 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 6171 (KLR)

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

DK KEMEL, J

MAY 30, 2024

BETWEEN

REPUBLIC PROSECUTION

AND

SAMUEL SIMIYU SILUNGI ACCUSED

JUDGMENT

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. The prosecution called ten (10) witnesses in support of its case.
3. 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 the deceased 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.

4. 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.



5. 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.
6. 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.
7. 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. On cross-examination, he confirmed that he was arrested by the police but later released without charge. He stated that he did not witness the incident.
8. 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.
9. 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.
10. Samuel Simiyu Sirengo (PW8) testified that the deceased was his eldest son and that he visited the mortuary where he identified the body which had stab wounds on chest, back and head. He identified the autopsy report marked as MFI-3.
On cross-examination, he stated that the deceased did not manage to reach home after travelling from Nairobi. He added that the weapon was recovered and handed over to the police. He added that he learnt that the person who had fought with the deceased also sustained injuries.
11. 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 that 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.
12. 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 both the accused and deceased. That he could not tell if the knife was used on both accused and deceased.

13. That marked the close of the prosecution case. Vide a ruling dated 31.1.2024 this court found that the prosecution had established a prima facie case against the accused and who was subsequently put on his defence. The accused opted to tender a sworn testimony.
14. Samuel Simiyu Silungi (DW1) testified that he had a short lived love affair with one Ruth Lunani (PW1) which did not result in sex. He stated that he had not known the deceased herein prior to the incident. He stated that on the material day, he was from the market and going home when he was accosted by a dreadlocked young man and who stabbed him on the chest. He raised alarm and members of public came to his rescue. He stated that he regained consciousness after three days in hospital. He denied being in possession of the knife. He stated that he later learnt that the deceased had been killed. He stated that that he did not know that if the lady Ruth Lunani was engaged to the deceased. He added that he did not see other villagers at the scene apart from Mike Masoni. He finally stated that he had no issues with the deceased who was a stranger to him. He maintained that he has never stabbed anyone with a knife.

On cross-examination he stated inter alia; that the deceased spoke with him in a rude way but that he ignored him; that he had not known the deceased before; that the deceased was alone at the time; that he and Ruth Lunani had a love affair in 2016; that it is not true that they had a child with the said Ruth Lunani; that he does not have grudges with persons who are unknown to him; that he does not know how the deceased ended up with injuries.

15. Learned counsel for the defence proposed to file submissions while counsel for the prosecution opted not to file submissions. However, at the time of writing this judgement no submissions had been filed by the defence.
16. I have duly considered the evidence presented by both prosecution and defence. It is trite law that the burden to prove all the ingredients of the offence herein falls on the prosecution in all cases save for a few statutory offences. The standard of proof in all criminal cases is that of beyond any reasonable doubt. Proof beyond reasonable doubt has however been stated not to mean proof beyond any shadow of doubt. The standard is discharged when the evidence against the accused is so strong that only a little doubt is left in his favour. See *Miller vs Minister of Pensions* [1947] All ER 372. In discharging the burden cast upon it by law, the prosecution is required to adduce strong evidence to place the accused at the scene of crime as the assailant since he does not have to prove his innocence or to justify his alibi. For a conviction to be secured, the court considers the strength of the evidence by the prosecution and not the weakness of the defence raised by the accused.
17. The ingredients that the prosecution is required to prove in a charge of murder are inter alia; that there was death of a human being; that the death was unlawfully caused with malice aforethought; that the death was caused by the accused either directly or indirectly.
18. As regards the fact of death, there is an autopsy report produced as exhibit 3 by Dr Wafula Simiyu (PW9) on behalf of Dr Inima Brian. The doctor formed the opinion that the cause of death was hemorrhagic shock secondary to injured pulmonary vessels due to penetrating stab wound. This ingredient of the offence was duly proved by the prosecution.



19. As to the unlawful nature of the death, the law presumes every homicide to be unlawful unless it occurs as a result of an accident or is one authorized by law. See *Republic vs Boniface Isawa Makodi* [2016] eKLR that referred to the case of *Guzambizi Wesonga vs Republic* [1948] 15 EACA 65 where the court held:

" Every homicide is presumed to be unlawful except where circumstances make it excusable or where it has been authorized by law. For a homicide to be excusable, it must have been caused under justifiable circumstances for example in self defence or in defence of property."

20. The deceased herein was found to have died from hemorrhagic secondary to injured pulmonary vessels due to penetrating stab wound. It was upon the prosecution to prove that the accused assaulted the deceased and that he had malice aforethought. Further, the prosecution was under a duty to adduce evidence which placed the accused at the scene of crime as the assailant. The injuries as disclosed in the autopsy report and the evidence of the pathologist left no doubt that the perpetrator intended the injuries to lead to the death of the deceased. Indeed, the injuries noted on the autopsy report could not give the deceased any fighting chance of survival. The homicide was thus unlawful and not authorized by law. This ingredient was also proved by the prosecution beyond any reasonable doubt.

21. As to the identity of the assailant, the evidence of PW1, PW2, PW3, PW4, PW5 and PW6 placed the accused at the scene of crime. PW1 was the lady at the centre of the love triangle between the accused and deceased. Apparently the said PW1 had been a former girlfriend of the accused before hitching up with the deceased and had moved on. It happened that the deceased was visiting the said girlfriend with a view to making a visit to her parents for purposes of introduction and to lead to marriage. It seems the accused herein got wind of the developments and was thus not happy with it and thus planned to eliminate the deceased who had become a serious rival. The evidence of PW1 gave a vivid account of the encounter between the accused and deceased. Her evidence was not shaken regarding the action of the accused in waylaying the deceased and murdering him. PW3 stated that he reached the scene and found the deceased had already been subdued and tied with a rope and was on the ground and that the accused whipped out a switch blade and stabbed the hapless deceased on the back and again punched him. PW4 stated that he extracted the knife from the body of the deceased and placed it in a bag belonging to the deceased. The other witnesses confirmed that earlier there had been some sort of a fight between the accused and the deceased. Even though the accused in his defence claimed that he was on his way home when someone with dreadlocks attacked him, I am not persuaded by the said assertion since he confirmed on cross-examination he had not met the deceased before the incident. The evidence squarely placed the accused at the scene of crime since upon learning that his former girlfriend was already in love with somebody else and that he had got wind that the new lover was travelling from Nairobi to meet her and thus hatched a plan to eliminate the said love rival. The incident took place in broad daylight and thus the witnesses saw what really transpired on the material date. Even though the accused sustained injuries, the same were as a result of the deceased trying to defend himself after the accused and his group had overpowered him and tied him up with ropes. The witnesses stated that despite the deceased having been subdued and tied with a rope, the accused whipped out a knife from his pockets and stabbed the deceased at the back. The said switch blade knife was identified by the witnesses and produced as exhibit one. The accused was arrested at the scene of crime and was taken to hospital and was later charged upon being discharged. I have no doubt in my mind that the accused caused the death of the deceased. He had prepared himself to eliminate the deceased so as to get rid of competition over a certain girl in the village (PW1). The accused should not have taken the law into his hands as there were other avenues of redress. The deceased did not deserve to die in the manner he did. In any case, the accused had already parted ways with his former girlfriend who had since moved on and got hitched with the deceased. The accused ought to have as well moved on. The actions of the accused



in seeking to eliminate his former girlfriend's new partner smacked of malice and bad faith since it led to the death of the deceased while there is no likelihood that the accused will get back together with his former girl friend. I am satisfied that the prosecution has proved that the accused was the assailant and who had malice aforethought. I find the defence evidence did not shake that of the prosecution which was quite overwhelming against the accused.

22. In the result, it is my finding that the prosecution has proved its case against the accused beyond reasonable doubt. I find the accused herein Samuel Simiyu Silungi guilty of the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#) and is hereby convicted accordingly.

DATED AND DELIVERED AT BUNGOMA THIS 30TH .DAY OF...MAY 2024

D.KEMEI

JUDGE

In the presence of :

Samuel Simiyu Silungi - Accused

Diva for Accused

Miss Kibet for Prosecution

Kizito Court Assistant

