

KENYA / JUDGMENT

Republic v Kipngok

[2025] KEHC 18148 (KLR)

[2025] KEHC 18148 (KLR)

COURT

High Court

BEFORE

RB Ngetich

CASE / FILE NUMBER

Criminal Case 27 of 2023

Source: new.kenyalaw.org · Research copy typeset by Esheria. Not court-issued or certified.

Republic v Kipngok (Criminal Case 27 of 2023) [2025] KEHC 18148 (KLR) (27 November 2025)
(Judgment) Neutral citation:

[2025] KEHC 18148 (KLR) Republic of Kenya In the High Court at Kabarnet Criminal Case 27 of 2023 RB Ngetich, J November 27, 2025 Between Republic Prosecution and Joseph Kiprotich Kipngok Accused

Judgment

1. The accused Joseph Kiprotich Kipngok was charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the charge were that on the night of 25th and 26th days of April 2023 at Chemoini village within Mogotio Sub-County within Baringo County the accused murdered Selly Chetoo. 2. The prosecution availed 9 witnesses to prove their case and upon the accused being found to have a case to answer, he gave sworn statement and did not have a witness to call. Prosecution's Case 3. PW1 Selina Cheruiyot testified that on 25.04.2023 she went to Emining market to sell herbal medicine and returned home at 7 p.m. on arriving, prepared supper, ate and slept and at night she heard a moto bike arrive and stop at her home. then someone knocked the door. they asked who the person was and the person said "she has hanged herself". she said the voice of the person was familiar and she identified as belonging to a neighbor by the name Joseph. she said her husband told him to go to the village elder. she said Joseph is accused herein and that the next day Kipkemboi who lived with accused went to their home with Vincent and she asked Kipkemboi what accused was saying at night and Kipkemboi told him nothing happened at Accused's house and asked to allow to park the motor bike they had used but PW1 refused. She said the motor bike was for accused. PW1 said they went to burn charcoal at the hill and while at the hill, they saw a vehicle which went to accused's house. She said they later met villagers who said there was someone who had hanged herself at accused's house and the person was called Selly. She said she did not go to the scene. 4. In cross

examination, pw1 said and that she did not know whether accused and deceased lived as husband and wife and that he did not hear the accused and Selly quarrel as they live a bit far in a forest and she could not hear them talk. She said she did not see accused that night but she identified his voice. 5. Pw2 Vincent Kibiwott Chesire testified that on 25 th April 2023 he went to accused's house which is about 2km from his home to take changaa. He said he met 3 people accused, kipkemboi and the deceased sally who were drinking. Pw2 said he asked for changaa and drunk and paid through Mpesa and drunk upto 3.50 p.m then left for his home and slept. He said he overpaid for the previous day and he asked for a refund. He said he overpaid by kshs 200 so that he could be given cash by accused did not gave him. He said he left and the next morning he went to collect the kshs 200. He said he met a village elder one Edin Lochumba and while he was talking to him, kipkemboi appeared and said he was going to the shop. He said he knew kipkemboi lived at accused's house. He joined kipkemboi to the shop. He said he asked him if accused was present. 6. Pw2 said accused went to tell him he had killed and left. He accused was going round at night saying he had killed while walking with Kipkemboi..He said they found accused's motor bike and they used it to molosirwa to buy tombacco and that the motor bike did not require a key to ignite. He said he purchased tombaco and did not go back with kipkemboi. On cross examination, he said he did not witness any conflict between accused and deceased. He said Accused and deceased had lived together for a short while. He said deceased had earlier been married at at molosirwa and her first husband still lived at Molosirwa 7. In cross examination, pw2 said the deceased and accused had lived together for a short while and that the deceased had earlier been married at Molosirwa. He said he did not witness any incident between accused and deceased. 8. Pw3 Joseph Cheptoo a sister to the deceased testified that he attended postmortem on the body of the deceased on 25 th April 2023 where she identified the body to the doctor for examination. 9. Pw4 Dr.Wangare Wambugu testified that on 2.5.2023 she conducted postmortem on the deceased's body and found that the deceased died as a result of asphyxia due to blunt force trauma following neck compression consistent with strangulation. She produced the postmortem report as exhibit 1. She said a leso was taken for analysis. 10. Pw5 Daniel Tuitoek Busik who is area chief molosirwa testified that on 26.4.2023, he received a call from a village elder who informed that a woman had been killed. He sent a child to confirm and it was confirmed upon which he called police to report. He said the report he received was for suicide by a woman. He said they went on the scene and they found a woman on the bed with a leso on the neck.He said the deceased was living with the accused 11. On cross examination, he confirmed that the deceased had been married elsewhere but she had come back and lived with the deceased. On re-examination, he said the leso was loose on the neck. 12. Pw6 Sophie Cheruiyot testified that on 26.4.2024, accused who is his neighbor went to her house in the morning and told her there is a woman who had committed suicide in his house. she said they went to his house and saw the deceased who had a leso on her neck. She said the body was in the bedroom of accused's house. she said she did not know how the deceased was related to the accused. She said the person who told her he had killed someone is accused. 13. Pw7 Polycap Lutta Kweyu no.2012024565 a Government analyst based at Kisumu Government chemist testified that he

prepared report dated 11.2.2025 following request by pc kimetto of DCI Mogotio. Upon comparing DNA profiles of samples taken to him he found the following: a. The Y filer (male DNA profile) generated from the feminal fluid on vaginal swab item A3 and from the pant item B5 are identical and match the male DNA profile of Joseph Kiprotich Kipngok the accused b. The autosomal (Female profile) generated from the stains of vaginal swab item A3 ,brazier item B2,pant item B5,the Bica item B6 ,the jumper item B7 and leso item B1 are identical and match profile of Selly cheptoo the deceased. c. The DNA generated from the shirt item B3 was partial and inconclusive 14. He produced the report in court as exhibit. On cross examination, he said from item A2, he only generated DNA profile from the deceased Selly cheptoo and he could not tell the owner of the skirt item B3. 15. Pw8 no.112109 PCW Yvonne Omondi a crime scene investigating officer vide Gazette notice number 1145 on 2.6.2023 testified that was asked to certify 9 photographs taken at the mortuary. She produced them in court as exhibit together with the certificate. On cross examination, she said a memory card was taken to him to confirm the photos. 16. PW9 no.234819 Pc Kipkurui kimetto testified that at the material time, she was attached to DCI Mogotio and on 26.4.2023, his boss informed him of a suicide incident at Molosirwa and the suspect had surrendered himself at Emining plice station. He said they went to Emining police station and found accused who confessed that he had killed his girlfriend Selly. They were joined by area chief to the house of the suspect where they found many people and the deceased's body inside the house of accused .he said the body was hanging from the roof with a leso on the neck. They took photos and drew sketch plan. 17. Pw9 said there were bruises on the right side of the deceased. They took the body to Eldama Ravin subcounty hospital and the suspect to court on 27.4.2023 to seek extension of days to hold him to complete investigations and postmortem was done on 2.5 .2023 by Doctor Wangare who form ed opinion that the cause of death was blunt force trauma consistent to strangulation. On 11.5.2023 ,he took samples to Kisumu Government chemist and on 2.6.2023,h took photographs tot scenes of crime officer in Nakuru. He said from his opinion, the deceased died of strangulation and not suicide. He produced leso, torn pink braiser, Black skirt, yellow shirt gray bica, yellow hooded jumper, pink undergarment and black bag as exhibits. 18. On cross examination, he said he did not record confession from the accused. He said in his statement he recorded that accused said he killed his girlfriend. He said it is a confession but he is not qualified to take confession. He further stated that the deceased had bruises on her knees and the neck Defence Case 19. In his sworn statement, the accused confirmed that he used to brew and sell changaa and on 25.4.2023, he went to sell charcoal then passed through a home where changaa was sold and drunk up to 5 p.m. and went home. He said at around 6 p.m., he met the deceased where he had left her in the morning. He said he had left the deceased with kipkemoi who was selling alcohol for him. He said he started drinking alcohol with a teacher who he found taking alcohol under a tree. He said when it started drizzling the teacher left leaving him, deceased and kipkemoi. 20. He said they entered the house and continued drinking up to around 8 p.m. when he felt tired and went to the bedroom to slept leaving the deceased in the sitting room. He said when he woke up, he found the deceased at his left side. He said they talked then he went for a short call. On

coming back, he realized he had not hidden the illicit brew and he went to hide and when he returned, he found the deceased hanging on a leso. He said he looked for a panga to cut the leso but did not find then he pulled it and the body fell down and the bed hit her on the back of the head. He said the knee fell down. He said he lifted the body but it fell down and he placed it on the bed. He said the body was still warm. He said he run to call kipkemoi and informed that he found his wife hanging and they went together to the house. He said he came to know her in march 2023 and that they had known each other for about a month. He said that he had not disagreed with the deceased and that they loved each. He said the deceased was his 3rd wife. 21. On cross examination by prosecution counsel, he said before living with the deceased, he had known her for about one month; that she used to buy alcohol from him and her sister was also selling alcohol. He said he had 3 houses and that the deceased used to sleep in another house but they used to live and eat together. He admitted that it was only him and the deceased who were in the room and that it took him 30 minutes to go and hide illicit brew. He also admitted that the deceased had injuries on the head and legs.

ANALYSIS AND DETERMINATION

22. To secure a conviction for murder contrary to section 203 of the Penal Code, the prosecution must prove beyond reasonable doubt: a) that the accused acted with malice aforethought as defined under section 206 of the Penal Code. b) that the death was caused by an unlawful act or omission of the accused; and c) Proof of death; 23. This is restated in Anthony Ndegwa Ngari v Republic [2014] eKLR, where the Court of Appeal emphasized these essential ingredients. (a) Whether the Death of the Deceased Occurred 24. The death of Selly Cheptoo is not in dispute. PW4 conducted the post-mortem and formed the opinion that the cause of death was asphyxia due to blunt force trauma following neck compression consistent with strangulation. The fact of death is therefore proved. (b) Whether the Death Was Caused by an Unlawful Act and Whether it Was Homicide or Suicide 25. The defence version is that the deceased committed suicide by hanging. The prosecution contends that the deceased was murdered. 26. Where suicide is alleged, the prosecution must disprove suicide by showing that the injuries were not self-inflicted. The medical evidence from PW4 is emphatic that the deceased died from manual strangulation, not hanging. 27. Manual strangulation is a form of unlawful homicide. As the Court of Appeal stated in Republic v Tubere s/o Ochen (1945) 12 EACA 63, the court must examine the nature of injuries, the part of the body targeted, and the manner they are inflicted. Medical Evidence 27. PW4's findings that the deceased died from blunt force trauma and neck compression consistent with strangulation negate suicide. In Njoroge v Republic [1983] KLR 197, the court held that medical evidence is crucial in establishing the cause of death where the manner of death is contested. 28. The injuries described are not consistent with suicidal hanging but with force applied externally, which is a deliberate human act. Scene Findings 29. Evidence from PW6 and PW9 showed that the body was found lying on the bed, with the leso loosely placed around the neck, which contradicts a typical hanging scenario. 30. The Court of Appeal in Sawe v Republic

[2003] eKLR emphasized that the court must consider whether the accused's version of events is reasonably plausible in light of objective physical evidence. Here, it is not.

Accused's Conduct Incriminating Utterances 31. Several witnesses (PW1, PW2, PW6 and PW9) testified that the accused stated he had killed someone or had killed the deceased. Even though not a formal confession under section 25A of the Evidence Act, such voluntary statements made to neighbours and police officers are admissible as part of conduct under sections 8 and 17 of the Evidence Act. 32. In *Tuwamoi v Uganda* [1967] EA 84, the Court held that even informal self-incriminating statements are relevant and may be relied upon if the court is satisfied they were voluntarily made. 33. The accused told PW6 directly that he "had killed someone" and surrendered himself to police the same morning while saying the same. This conduct is strongly indicative of guilt. Exclusive Presence with the Deceased 34. The accused admitted he was alone with the deceased in the house that night. No evidence suggests intrusion by a third party. The principle in *Erick Odhiambo Omondi v Republic* [2015] eKLR applies where the accused was the last person to be seen with the deceased alive, he bears an evidentiary burden to give a reasonable explanation of what happened. His explanation must be plausible. The accused's explanation of suicide is inconsistent with the medical findings. Circumstantial Evidence 35. Much of the prosecution's case is circumstantial. For a conviction to be based on circumstantial evidence, the chain must be complete and must exclude any other reasonable hypothesis except that the accused is guilty. This test is stated in the case of *Sawe v Republic* [2003] eKLR, *Abanga alias Onyango v Republic* Cr. App No. 32 of 1990, and *Republic v Kipkering arap Koske & Another* (1949) 16 EACA 135.4 36. The inculpatory facts in this case are: a. the deceased was last seen alive with the accused; b. medical evidence showed manual strangulation; c. the leso found on her neck was loosely tied; d. the accused claimed suicide, which is inconsistent with the injuries; e. the accused made self-incriminating utterances; f. the accused surrendered to police stating he had killed the deceased. These facts form a complete chain pointing irresistibly to the accused as the perpetrator. 37. From the foregoing, I am convinced that the prosecution proved beyond reasonable doubt that the accused unlawfully caused the death of the deceased. Whether Malice Aforethought Was Proved 38. Malice aforethought may be inferred from: a. the nature of the injuries; b. the part of the body targeted; c. the force used; d. the conduct of the accused before, during and after the act. 39. In *Republic v Tubere s/o Ochen* [1945] 12EACA 63, the court held that persistent and forceful pressure on the neck sufficient to cause strangulation demonstrates an intention to cause death or grievous harm. Strangulation is an inherently deliberate act requiring sustained application of force. There is no evidence of provocation, accident, or sudden fight. The deceased's injuries on the neck and knees indicate a struggle. 40. In *Nzuki v Republic* [1993] KLR 171, the Court of Appeal held that malice aforethought can be inferred where the injuries are intentionally inflicted and are of a nature likely to cause death. 41. The accused's conduct after the incident Through his utterances, his attempt to portray the death as suicide, and his surrender while acknowledging responsibility are all consistent with guilty knowledge. I therefore find that malice aforethought under section 206(a) of the Penal Code was established. Accused's defence 42. The accused's claim that the deceased committed suicide

is incompatible with medical evidence of manual strangulation, the location and position of the body, injuries inconsistent with hanging and his own incriminating utterances. From the foregoing, the accused's defence does not raise any reasonable doubt and is rejected. 43. In view of the above, the prosecution proved all elements of the offence of murder to the required standard. Final Orders: 44. a. I hereby find JOSEPH KIPROTICH KIPNGOK GUILTY of murder contrary to section 203 as read with section 204 of the Penal Code and convict him accordingly. b. Right of appeal within 14 days Explained RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 27 TH DAY OF NOVEMBER 2025.

..... RACHEL NGETICH JUDGE In the presence of: CA Elvis Ms. Kosgei H/
B for Ms. Omari for state Ms. Barasa for Accused Accused Present

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://new.kenyalaw.org/akn/ke/judgment/kehc/2025/18148>

CASE PAGE <https://chat.esheria.ai/case-law/kenya/republic-v-joseph-kiprotich-kipngok-2025>

Prepared on 28 October 2026 · Esheria