



**Republic v Muriuki (Criminal Case 12 of 2019)
[2024] KEHC 9273 (KLR) (31 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9273 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL CASE 12 OF 2019
LM NJUGUNA, J
JULY 31, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

MARIA WANJA MURIUKI ACCUSED

JUDGMENT

1. The accused person was charged with murder contrary to Section 203 as read together with Section 204 of the Penal Code. The particulars of the offence are that on 29th April 2029 at Moundu village, Riandu location in Mbeere North subcounty within Embu County, the accused unlawfully murdered Sebastian Muriuki Mbaka. Upon arraignment, she pleaded not guilty and a plea of not guilty was duly entered before the matter proceeded to full hearing. The prosecution called witnesses in support of its case.
2. PW1 was Francisca Muthoni Cyrus, aunt of the deceased. She stated that on the fateful day, she was sleeping in her shop when at around 2.00 a.m Lucy Wanja who has a bar next to her shop, banged her door and asked her why she was sleeping when the deceased was being killed. That she woke up and went to the home of the deceased in the company of her husband. That when they arrived, they asked the accused who is the deceased’s wife what had happened, she told them that some people had asked the deceased to open the cowshed but he refused. She stated that there were about 30 people in the homestead and when they entered the house, they found the deceased lying on the bed, seeming lifeless and with injuries on his face and hands. That there was also blood on the walls.
3. That when the police arrived, they asked the accused where the panga she uses is, but she said that she usually borrow from the neighbors. That the police told the accused to enter their motor vehicle. That she saw a blood-stained axe in the vehicle. She stated that the accused and the deceased had a strained marriage and they used to fight. During cross-examination, she was referred to her initial statement in which she stated that she received a phone call. She denied having received any phone call that night and



- insisted that the news was broken to her by Lucy Wanja. She also denied that her statement indicated that she saw a panga that night. It was her further evidence that her home is not far from that of the deceased but she did not hear any distress calls. She stated that the accused and the deceased used to fight a lot but she could not tell why they fought that night.
4. PW2, Genesis Muturi stated that one Nthiga of the Nyumba Kumi called him at around 1:05a.m that morning and asked him to go to the home of the accused to find out what the distress was about since the deceased had a sick leg. That since he lived near the deceased's home, he went and found the accused and her 2 children crying, saying that the deceased was dead. That the accused took him to the bedroom where the body of the deceased was, and she told him that the deceased had been attacked by robbers. That he screamed 3 times and people gathered. He stated that he saw an axe being removed from the roof of the kitchen and it had blood stains. That he noticed that the accused was crying but not seriously.
 5. He stated that the marriage between the accused and deceased was strained and they fought often. Upon cross-examination, he stated that the deceased's father was in his house that night and he couldn't tell whether he had been to the deceased's house. That whenever the accused and the deceased fought, the children used to scream a lot but that night, no screams were heard. That the deceased had injuries on his head and hands but his clothes did not have blood stains. He stated that he was the first person to see the axe because it was protruding from the kitchen roof and he showed it to PW1.
 6. PW3 was Dr. Job Mwaniki who carried out postmortem on the body of the deceased at Mbeere Level 4 Hospital. He stated that the body was identified to him by PW1 and that the clothes of the deceased were blood stained. That the body had a deep cut wound on the wrist of the right upper limb, measuring about 4cm by 3cm which was consistent with a defense wound. That there was an identical wound on the left upper limb. There was a penetrating wound measuring 15cm by 4 cm on the face and another deep cut on the forehead measuring 8cm by 7cm. There was a deep wound on the right orbital region measuring 4cm by 5cm.
 7. He observed that there was intracerebral hemorrhage and signs of traumatic brain injury. He formed the opinion that the cause of death was cardiopulmonary arrest secondary to hypovolemic (acute blood loss) as a result of multiple penetrating injuries. He stated that the death certificate was issued and he produced it as evidence. That he collected samples from deceased's fingernails and the same were handed over to the officer present. On cross-examination, he stated that the wounds on the right and left hands were defense wounds and that the deceased was not asleep when the injuries were inflicted.
 8. PW4 was Cpl. Joseph Magut formerly of Mbeere North DCI office. He was the investigating officer in the case. He stated that on the day of the incident at around 2:30 a.m, he received a phone call from DCIO instructing him to commence investigations regarding a murder scene at Muondu village. That he went to the scene in the company of his colleagues and they found the area chief, one John Makenge who took them to the deceased's house. That they found the deceased lying on the bed with his feet touching the floor and he had injuries on his legs and hands. That the accused told them that the deceased had been attacked by robbers who had inflicted the injuries on him.
 9. When they interviewed the eldest child of the deceased, she stated that she heard commotion in their parents' bedroom and when she went to find out what was happening, there was no response. That she asked the accused why she had to bypass the father-in-law's house to seek help yet the father-in-law was there all along. That they recovered a blood-stained axe on the kitchen roof and they suspected it to be the murder weapon and it was produced as an exhibit. That they also recovered some blood-stained clothes that belonged to the accused in the bedroom and a panga in the sitting room. He stated that he



recorded witness statements and prepared an exhibit memo and sent the exhibits to the government chemist for analysis.

10. He also produced the accused person's mental assessment report. That the accused person was arrested on the night of the incident. During cross-examination, he referred to the statement of Wincate Wawira Muriuki who stated that when she heard commotion in the house, she stated that she heard the voice of a man demanding money for a cow. He stated that the accused went about 450 meters to report the matter quietly to the area chief without screaming. That by the time the government chemist analysis results were out, he had already been transferred to another station but the findings have been presented before the court.
11. PW5 was Mbaka Arthur Robia, the deceased's father who stated that he lives in the same compound with the deceased and his family but he has his own house. That on the night of the incident, the accused knocked on his door and informed him of what had happened. That before the accused knocked on his door, he did not hear any commotion because he was drunk on that night. That when he went towards the deceased's house, he found the body of the deceased lying outside the house and upon inquiry, the accused told him that the deceased had been attacked and killed by some people who entered the house.
12. That the body of the deceased had severe injuries on his head and he reported the matter to Siakago Police Station. That a blood-stained axe was found on the kitchen roof and it was taken by the police. He stated that the 5 children of the deceased were in the house that night but they could not tell what happened but the accused was arrested in connection with the murder. On cross-examination, he stated that the blood-stained axe was found on top of the house near the roof. He did not think that the accused murdered the deceased even though they used to have disagreements. That the police did not visit the scene.
13. PW6 was Henry Nthiga who stated that on the night of the incident, she heard distress calls from the accused approaching her house at around midnight. That he woke up and upon inquiry, the accused told him that she left when the deceased was being attacked by thieves. That he called John Kinyua and Geoffrey Kithaka (through his wife) and he informed them of the incident. That he did not leave his house to follow up that night. He stated that he knew both the accused and the deceased and that they used to have disagreements. He recounted a time when the accused had a problem with the deceased because of selling miraa and keeping all the money to himself. On cross-examination, she stated that on that night, he asked Kithaka's wife to go to the scene and find out what was happening. That the police and the area chief visited the scene the same night.
14. PW7, John Mwaniki Makenge, the retired area chief stated that a village elder called to inform him of the incident and he called the deputy county commissioner and the OCS, Siakago Police Station. That he proceeded to the scene where he found the deceased lying across on the bed with deep cuts on his head and hands. That a crowd had gathered outside the house and the police took over the scene. He couldn't recall if the children of the deceased were at the scene. That the police removed the body of the deceased and arrested the accused person as a suspect. That they also recovered an axe which was on the kitchen roof which was the suspected murder weapon. He stated that the deceased was known for his drinking problem which was the source of many of the conflicts she had with the accused. On cross-examination, he stated that when the accused went to the sub-area chief, she looked scared and anxious. That the general suspicion was that the accused was involved in the death of the deceased.
15. PW8, Ruth Wangari Kahi of government chemist, Nairobi stated that her office received a request for analysis accompanied by samples which were an axe with a wooden handle, a panga with a rubber handle and some clothing belonging to the accused. She concluded that the blood stains on the axe



- and on the clothing were from a common human origin of an unknown male. On cross-examination, she stated that she did not receive any samples from the accused or from the deceased.
16. The prosecution closed its case and the court found that the accused had a case to answer. The accused person was placed on her defense.
 17. DW1, the accused person, stated that on the night of the incident, she retired to bed at around 9.00 p.m. and at that time, the deceased had not returned home. That the deceased was involved in livestock trading and that week, they had sold a calf to some people. That the door to the house remained open because it had a problem and so when the deceased eventually arrived home, he let himself in since the door was unlocked. That since the time the deceased arrived, she lost sleep and soon afterwards, 3 men entered the house with torches claiming that the deceased had taken their money. That one of the men told her to go outside and give them their cow and so she left with one of the men to the cowshed and while there, she heard commotion in the house where the 2 men had remained with the deceased.
 18. That the man she was with returned to the house and she ran to the sub-area's house to inform him of the incident but when she told him about it, he did not take her seriously since the deceased was a drunkard and that is when she started screaming. She stated that she started going back to her house and she found that a crowd had gathered and the police led her into the house where she saw the deceased lying on the bed. That the police took her in their vehicle to the police station together with an axe which was given to them by her aunt who claimed that the accused used it to kill the deceased. That she does not know anything about the murder of the deceased and that the 3 men who went to her house that day are not known to her.
 19. On cross-examination, she stated that the 3 men had torches but she did not see their faces. That the nearest neighbor was the sub-area and her father-in-law's house was within their compound. That she did not alert her father-in-law of the incident that night. That the children were in the house at the time the scuffle ensued while she was outside and she did not know whether they witnessed the incident.
 20. DW2 was Wincate Wawira Muriuki, daughter of the deceased who stated that on the night of the incident, she left a neighbor's house where she had gone to watch TV with her younger brother and they went home and slept. That at some point during the night, she heard a panga cutting the door and the voice of a man demanding for money from the deceased. That she heard the deceased saying "usiniuwe, nitakupea" (don't kill me, I will give you). That she did not see any of the people who were talking because they were inside her parent's room which had a curtain at the doorway.
 21. That when she stood at her bedroom door and asked what was happening, there was no response. That it is her grandfather who raised alarm followed by the accused when she was on her way from the neighbour's house. On cross-examination, she stated that the people who were in her parent's room had a torch. That her grandfather called her when he arrived at the scene but she told him she did not see who the men were.
 22. Both parties filed their written submissions in the case.
 23. The accused person submitted that from the testimonies of the prosecution witnesses, there is no malice aforethought and none of the witnesses can place the accused person at the scene. She relied on the case of *Abanga alias Onyango v. Republic (1990) eKLR* and argued that even where the court should rely on circumstantial evidence, the same should meet the parameters laid down in the said case.
 24. It was her argument that the deceased could have involved himself in a business deal gone wrong. That it is not true that she did not scream, otherwise, the crowd could not have gathered. She cited the inconclusiveness of the DNA evidence which does not point to the accused as the killer. She relied on



- the case of Pius Arap Maina v. Republic (2013) eKLR and urged the court to follow the gaps in the prosecution's evidence and acquit the accused.
25. On its part, the prosecution relied on the provisions of section 203 of the Penal Code and the case of Anthony Ndegwa Ngari v. Republic (2014) eKLR where the elements of the offence of murder were discussed. It was its argument that the death of the deceased is inexcusable according to Article 26 of *the Constitution* and the case of Guzambizi Wesonga v. Republic (1948) 15 EACA 63. It urged the court to consider circumstantial evidence as provided for in the cases of Abanga alias Onyango v. Republic (1990) eKLR and Kipkering Arap Koske & Another (1949) EACA 135.
 26. That the testimonies of PW2, PW5 and PW6 create a chain of evidence that implicates the accused person for the murder. It further relied on section 111 of the *Evidence Act* which demands that the burden of proof shifts to the accused person under the circumstances provided. On its argument on malice aforethought, it relied on section 206 of the Penal Code and the case of Joseph Kimani Njau v. Republic (2014) eKLR. It urged that the nature of injuries inflicted on the deceased were intended to kill him, given the cause of death as stated by PW3. That the defense evidence merely denied involvement in the offence but it failed to challenge the prosecution's case.
 27. The issue for determination is whether the offence of murder has been proved beyond reasonable doubt.
 28. Article 26 of *the Constitution* of Kenya provides that a person shall not be deprived of life intentionally, except to the extent authorized by *the Constitution* or written law. The accused person herein faces the charge of murder under section 203 as read together with 204 of the Penal Code. The prosecution bears the burden of proving beyond reasonable doubt, that the accused murdered the deceased. These provisions of the Penal Code provide the elements of the offence as follows:

“203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
 29. The elements to be proved herein are the following:
 - a) The fact and cause of death of the deceased.
 - b) That the said death was caused by unlawful act of omission or commission on the part of the accused person.
 - c) That the said act of omission or commission was with malice aforethought as defined in Section 206 of the Penal Code.

(See also the cases of Republic v W.O.O. [2020] eKLR (Migori High Court Criminal Appeal No. 26 of 2017) and Anthony Ndegwa Ngari vs Republic [2014] eKLR)
 30. The cause of death is established as documented by PW3 in the postmortem report. He detailed the deep cuts inflicted on the deceased's hands and head and formed the opinion that the cause of death was cardiopulmonary arrest secondary to hypovolemic shock (acute blood loss) as a result of multiple penetrating injuries.
 31. As to whether the accused person is responsible for the death of the deceased, the prosecution witnesses testified thus: PW1 was informed of the incident by someone else. She entered the house of the deceased and found him already dead. PW2 stated that PW6 called him and asked him to go to the deceased house and find out what the distress calls were about. That upon arrival, he found the accused and her children crying outside the house saying that the deceased was no more. That the accused took him



- to the house and he saw the body of the deceased. The accused told him that the deceased had been attacked by robbers. That he raised alarm by screaming 3 times and a crowd gathered.
32. PW5 stated that on the night of the incident, he was drunk and that it was the accused who woke him up to inform him of the incident. That at the scene, he found the body of the deceased outside the house and the accused did not tell him who attacked the deceased. That the neighbors went to the scene because the accused person was screaming although he did not hear the screams because he was drunk and was fast asleep. That he reported the matter at the police station and at the sub-area who is his neighbor, but he did not come out to help.
33. PW6, the sub-area stated that the accused went to his house to inform him of the incident and he started making some phone calls as the accused returned to her home. He stated that he did not go out that night. PW7, the area chief stated that when PW6 called him, he went to the scene with the police and they found the deceased lying lifeless on the bed. He was also present when the alleged murder weapon was recovered from the scene. PW1, PW2, PW5, PW6 and PW7 all testified that the accused and the deceased had frequent misunderstandings. However, none of these witnesses witnessed the accused actually killing the deceased.
34. The state urged the court to consider circumstantial evidence as was expounded by the court in the case of *Abanga alias Onyango v. Republic (1990) eKLR* as follows:
- “It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests: (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established, (ii) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (iii) the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.”
35. The court of appeal has pronounced itself on this in the case of *Chiragu & another v. Republic (Criminal Appeal 104 of 2018)* [2021] KECA 342 (KLR) where it stated:
- “Thus, there was no direct evidence linking the appellants to the death of the deceased. The prosecution case on this aspect therefore hinged on circumstantial evidence. In the case of *Ahamad Abolfathi Mohammed and Another v Republic* [2018] eKLR, this Court had this to say on circumstantial evidence: “However, it is a truism that the guilt of an Accused person can be proved by either direct or circumstantial evidence. Circumstantial evidence is evidence which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence can form a strong basis for proving the guilt of an Accused person just as direct evidence. Way back in 1928 Lord Heward, CJ stated as follows on circumstantial evidence in *R v Taylor, Weaver and Donovan* [1928] Cr. App. R 21: ‘It has been said that the evidence against the Applicant is circumstantial. So it is, but circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by intensified examination is capable of proving a proposition with the accuracy of mathematics. It is no derogation from evidence to say that it is circumstantial.’”
- Further, the conditions for the application of circumstantial evidence in order to sustain a conviction in any criminal trial have been laid down in several authorities of this court.”



36. In the case of *Sawe v. Republic* [2003] KLR 364, the Court of Appeal amplified on the above thus:

“In order to justify on circumstantial evidence, the inference 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. There must be no other co-existing circumstances weakening the chain of circumstances relied upon. The burden of proving facts that justify the drawing of this inference from the facts to the exclusion of any other reasonable hypothesis of innocence remain with the prosecution. It is a burden which never shift to the party accused.”

37. The DNA analysis of the items recovered from the scene by the police remains inconclusive since it only revealed that the items were stained with human blood. However, this does not mean that circumstantial evidence cannot be considered.

38. DW1, in her defense, narrated that she was asleep when the deceased arrived home later in the night. That she heard him coming into the house since the door was unlocked. She stated that shortly afterwards, 3 men got into the house while carrying torches and they demanded money from the deceased. That the deceased, who was a livestock trader, had sold a calf earlier that week. That one of the men took her outside to untie the calf for him and while they were there, they heard a scuffle in the house where the deceased had been left with the 3 men.

39. She testified that the man who had escorted her out of the house returned to his companions when the scuffle ensued. That she ran to the house of PW6 but she did not get much help and when she returned, she found a crowd had gathered at her home. DW2 stated that she heard the voice of a man confronting her father about money and he was begging him not to kill him. She stated that when she asked what was happening, there was no response but she saw torch lights flickering from her parents’ room which had a curtain on the doorway.

40. DW1’s account of the events of that night is not believable. In addition, the testimony by DW2 also does very little in exonerating the accused of the offence. The defense case fails to raise reasonable doubt which the accused could have taken advantage of. According to Duhaime’s Criminal Law Dictionary, reasonable doubt is not mere possible doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence leaves the mind of the court in that condition that it cannot say it feels an abiding conviction to a moral certainty of the truth of the charge.

41. Therefore, I find that the prosecution has proved its case against the accused person beyond reasonable doubt. The accused person is hereby found guilty of the offence of murder contrary to section 203 of the Penal Code and is convicted accordingly.

42. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 31ST DAY OF JULY, 2024.

L. NJUGUNA

JUDGE

..... for the state

..... for the Accused person

