



**Republic v Njiru (Criminal Case E015 of 2022)
[2024] KEHC 9272 (KLR) (31 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9272 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL CASE E015 OF 2022
LM NJUGUNA, J
JULY 31, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

DANCAN MUCANGI NJIRU ACCUSED

JUDGMENT

1. The accused person faces the charge of murder contrary to Section 203 as read together with Section 204 of the Penal Code. Particulars of the charge are that on 11th September 2022 at Kiambogu village, Kathunguri Sub-location, Kyeni South Location within Embu County, the accused murdered Bernard Mwangangi Kasyoka. Upon arraignment, he pleaded not guilty and a plea of not guilty was duly entered before the matter proceeded to full hearing.
2. PW1, Justin Njeru Kamichengo stated that on the day of the incident, he was in his house watching TV with his daughter when they heard commotion outside. That his daughter was the first one to go out of the house to check what was happening and he followed her and they both heard the accused saying “nitakupiga (I will beat you)” and another person responded saying “usinipige Dan (don’t beat me, Dan).” He stated that he could hear the voices from about 200 meters away and they returned to their house. That the following morning, they heard that the deceased had been killed and the body was lying on a parcel of land that the accused had leased. That he had known the deceased for a period of about 2 years but he did not know him very well. On cross-examination, he stated that his daughter is the one who first heard the confrontation when she went out to answer to a call of nature and she alerted him. That his house is near a road and could hear passers-by but it was not in his habit to check on them when they passed. He stated that the people were talking in high tones and that is how he was able to identify the accused person’s voice.
3. PW2 was Lucy Wawira Njeru who stated that on the day of the incident, she was at home watching TV with PW1 at around 12:30AM. That she went outside the house and heard the accused telling the



deceased in a loud voice: “you are the one who has been stealing my things”. She stated that when she heard the confrontation, she called her father and since the accused and the deceased were brothers, she made a phone call to Kyalo so that he could go and find out what was happening but he did not pick the call. That she told PW1 that the accused and the deceased should be left alone since they are brothers and they went back to the house. That the following morning, she woke up at 5.00 a.m to prepare the children for school and while she was escorting them, she found school children at the accused person’s farm and they said the deceased was lying there. She called Kyalo on phone and told him what the children had told her. She went to the scene but she did not go near the body. That she recorded her statement with DCIO. On cross-examination, she stated that she knew the voice to be that of the accused because the noise emanated from his farm which he had leased and he had known him for long.

4. PW3 was Joseph Kyalo who stated that the deceased is his younger brother. That he received a phone call at around 6AM from Njeru, informing him to go to Kabuuri and he went immediately. That he met PW1 and PW2 who told him to go to the scene to check whether the deceased was his brother. That he went and confirmed that it was indeed his brother. That he then informed his mother and the accused person’s mother, who both visited the scene before the body was taken away from the scene by the police. On cross-examination, he stated that prior to Njeru’s phone call, he had not received any other call. That he called the accused person’s mother because she was his relative.
5. PW4, Lucy Wanja Njiru, sister of the accused and sister-in-law of the deceased, stated that her mother, Doris Marigu called her to ask her if she had spoken to the accused but she had not. That her mother advised her to call him and tell him that word on the street was that the accused had killed someone and that the police are looking for him. That she called him and told him to surrender himself to the police and she went to the scene and confirmed that the deceased was dead. It was her testimony that she called the accused who was on the way to Runyenjes Police Station and she accompanied him there. That she asked him whether he killed the deceased but he denied and he was detained by the police at Runyenjes Police Station for his safety. On cross-examination, she stated that when she called the accused, he was at home and he told her that if indeed he had killed someone, he would be on the run. That when she went to the scene, she found the body of the deceased lying a few meters from the road. That when they went to the police station, the accused told the police that there had been thieves at his farm at around 3AM and a scuffle ensued.
6. PW5, Michael Mwanzia Mwenza, cousin of the deceased, stated that on the day of the incident at around 10AM, he received a phone call informing him that the body of the deceased was lying on the accused’s shamba. That he went to Kyeni Hospital where he identified the body of the deceased.
7. PW6, Jim Kinyua Gaciare stated that he knows the accused and that he had rented his land to him. He narrated that he was on the way to his place of business when he saw the body of the deceased lying on the land that he had leased to the accused. That he called the sub area, who called the chief who then called the police and the body was removed from the scene. On cross-examination, he stated that he knew the accused for a while and he had never quarreled with him. That he saw blood on the head of the deceased.
8. PW7 was Dr. Moses Maina of Consolata Hospital Kieni, who stated that he performed postmortem on the body of the deceased. He observed that the body of the deceased was pale, a sign that he had lost a lot of blood. That the deceased’s right big toe had a 3cm deep cut near amputation and a 2cm deep cut on the left toe near amputation. That there were bruises on both hands and fractures on the right hand, the body was soiled and the injuries seemed to have been caused by a blunt object. There was a star-shaped 6cm cut on the occipital region of the head and a 3cm cut on the parietal part of the head.



9. He observed bleeding under the scalp and in the neck. He formed the opinion that the cause of death was excessive bleeding due to trauma. He produced the postmortem report as evidence. He also produced a mental assessment report on behalf of Dr. Sheila Shavulimo of Embu Level 5 hospital who conducted mental assessment on the accused and found him fit to stand trial. On cross-examination, he stated that the injuries on the body of the deceased had been inflicted before he died. That if the injuries had been inflicted after the death, the wounds would not have bled and would have been white.
10. PW8 was Cpl. Pauline Mugambi who stated that she was instructed to investigate a reported murder case and she went to the scene in the company of her colleagues. That at the scene, they found the lifeless body of the deceased, lying at the farm of the accused and they recovered a blood-stained cap, a rope and a cane stick at the scene which they collected as evidence. That the crime scene was processed by scenes of crime personnel and the body was identified by family members. She stated that she recorded statements of witnesses. That the accused person presented himself at Runyenjes Police Station fearing that he would be lynched by members of the public and he was placed in custody. That the exhibits were sent to the government chemist for analysis and the accused was charged with the offence. That there were no eye witnesses to the incident and that the witnesses testified to hearing the voices from the accused person's farm. That one witness stated that while on the way home, they found the accused beating the deceased. That on the day of the incident, the accused was at the farm as a watchman and that he told the police that he saw a mob lynching the deceased who was stealing crops at the farm. She produced the exhibits recovered from the scene as well as the exhibit memo which was sent to the government chemist for analysis. She also produced the report by government chemist as evidence.
11. After the close of the prosecution's case, the accused person was placed on his defence.
12. DW1, the accused person, stated that on the day of the incident, he was at his farm working on his crops and making bricks until 6p.m when he returned home. That at home, he prepared supper, ate and then retired to bed at around 7:30 p.m. That he woke up the following morning and went to work on his farm but when he went near the farm he saw a crowd of people at his farm. He saw the deceased lying there and he went to report at the police station.
13. That when he got to Runyenjes Police Station, he was arrested and detained but he did not know why and the police forced him to sign some papers, whose contents he did not know. He stated that he did not have anything to do with the death of the deceased. That the deceased was his brother-in-law and there was no bad blood between them. On cross-examination, he stated that the body of the deceased was 30 meters from the road but outside his farm. That there were no theft incidences at his farm and after he reported the matter, he did not obtain an OB number.
14. After the close of the defense case, both parties indicated that they did not wish to file submissions.
15. It is now upon this court to determine whether or not the offence of murder has been proved beyond reasonable doubt.
16. 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 a charge of murder under sections 203 as read together with 204 of the Penal Code. It is upon the prosecution to prove beyond reasonable doubt, that the accused person murdered the deceased. Section 203 of the Penal Code provides as follows:

“ 203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”



17. In the case of *Republic v W.O.O.* [2020] eKLR (Migori High Court Criminal Appeal No. 26 of 2017) the elements of murder were explained, as guided by the Court of Appeal in the case of *Anthony Ndegwa Ngari vs Republic* [2014] eKLR, as follows:
- “For the offence of murder to be proved, there are three elements which the prosecution must prove beyond reasonable doubt in order to secure a conviction. They are: (a) the death of the deceased and the cause of that death; (b) that the accused committed the unlawful act which caused the death of the deceased and (c) that the accused had the malice aforethought.”
18. On the first element of death and cause of death, PW7 testified that he examined the body of the deceased and the same was pale, a sign that he had lost a lot of blood. That the deceased’s right big toe had a 3cm deep cut near amputation and a 2cm deep cut on the left toe near amputation. That there were bruises on both hands and fractures on the right hand, the body was soiled and the injuries seemed to have been caused by a blunt object. He stated that the injuries were as a result of blunt trauma and the cause of death was bleeding due to trauma. His testimony satisfies the element of death.
19. The second element is the unlawful act of the accused that caused the death of the deceased. In other words, it is required that the prosecution proves that the accused was indeed at the scene of crime and he caused the death of the deceased. From the evidence on record, PW1 and PW2 testified that they heard a loud verbal altercation between 2 people, and they identified the voice of the accused as he threatened the deceased. They stated that they did not go near where the noise was coming from as it was in the middle of the night. PW2 stated that since the altercation was happening between brothers, they retreated back to their house and slept until the next morning when she heard about a body that was found in the accused person’s farm which body was that of the deceased.
20. PW3, PW4 and PW5 all heard about the incident from others. PW3 stated that he was informed of the death of the deceased by PW1. PW4 was informed by her mother who told her to get in touch with the accused, her brother and she went with him to the police station. PW5 stated that on the 21/09/2022 he was at home when he heard people saying that the body of the deceased was lying on the accused person’s land. PW6 stated that he passed by the scene and saw the body of the deceased and a crowd that had gathered. That he is the one who called the authorities to the scene.
21. PW8, the investigating officer, stated that the accused person reported the incident at the police station and he was detained for his own safety. It was her evidence that there was a witness who informed her that he saw the accused beating the deceased. However, none of the prosecution witnesses testified as much. PW8 further stated that her office collected samples from the exhibits found at the scene, and requested for analysis from the government chemist. She produced the government chemist report which bore the conclusion that the DNA profile from the blood sample on the plastic rope found at the scene matches the DNA profile generated from the blood of the deceased. This conclusion also does not place the accused person at the scene.
22. In his defense, the accused person stated that he went to bed at 7:30PM after a whole day’s work at his farm. He stated that the following morning, he found a crowd that had gathered at his farm where the body of the deceased lay lifeless. That he decided to report the matter to the police station but he was placed in a cell and made to sign documents whose contents he did not know.
23. From the evidence on record, none of the witnesses placed the accused person at the scene, or connected him with any unlawful act that resulted in the death of the deceased. The closest the prosecution came to this, is through the testimonies of PW1 and PW2 who merely relied on the voices they heard that night, which led them to conclude that the accused was exchanging words with the deceased before he was found dead. PW1 and PW2 stated that from where the house is, and where the noise was coming



from, is about 200 meters. In my view, from such a distance, one cannot safely identify someone's voice. Even assuming that one can be able to do so, the witnesses did not tell the Court how they were able to identify the accused person's voice and what is unique with his voice. It would therefore not be safe for this Court to convict the accused person based on that evidence only in view of the above sentiments and considering that there is no other evidence either direct or circumstantial connecting the accused person to the offence that he is charged with. The DNA evidence has also failed to link the accused person to the murder of the deceased.

24. In my view, there is reasonable doubt as to whether the accused killed the deceased. 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.
25. The element of malice aforethought is therefore impermeable in this case because the prosecution has not proved beyond reasonable doubt that the accused murdered the deceased. This court, therefore, need not go further into the evidence to ascertain malice aforethought as the same would be immaterial in the face of reasonable doubt, which should be adjudged in favour of the accused person.
26. In the end, having considered the evidence and the relevant law, it is my finding that the prosecution has failed to prove the offence of murder beyond reasonable doubt. The accused is therefore found not guilty of the offence of murder contrary to section 203 of the Penal Code and is hereby acquitted accordingly.
27. 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**

