



**Republic v Mubeu (Criminal Case E027 of 2021)
[2024] KEHC 10502 (KLR) (27 August 2024) (Judgment)**

Neutral citation: [2024] KEHC 10502 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL CASE E027 OF 2021
LM NJUGUNA, J
AUGUST 27, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

DICKSON MUKUNDI MUBEU ACCUSED

JUDGMENT

1. The accused person herein has been charged with the offence of murder contrary to section 203 as read with 204 of the penal code. The particulars of the charge are that on the 2nd day of August, 2021 at Gitiburi village within Embu County, he murdered Lucy Muthoni. Upon arraignment, he pleaded not guilty and a plea of not guilty was duly entered before the matter proceeded to full hearing.
2. PW1, Stephen Njeru Mbogo stated that on the 2/8/2021, at around 6.00 a.m, the accused person went to his home and told him that he had quarrelled with his wife (the deceased herein) and they fought and that the wife was in a bad state. That he (PW1) refused to go and advised the accused to go and report the matter to the police. He also advised him to look for a vehicle to take the deceased to Hospital. That the accused managed to carry the deceased up to the road and when PW1 saw her on the road, the deceased had injuries on both hands, the legs and she was in a bad condition. That Stephen Gitonga came along driving a motor vehicle and the accused requested him to assist in taking the deceased to hospital but he refused to assist. That since they were fearing that the accused person might run away, they tied his hands together and Stephen Gitonga went and reported the matter at Muchonoke Police Station. Police officers later went to the scene and arrested the accused person and took the deceased to hospital but she died on arrival at the hospital.
3. PW2, Jacob Njeru Mbaka, Senior Chief stated that on 2/8/2021, he received a call from a resident in that area who informed him that there was a certain person who was on the road with his wife and she was looking like she was dead. He also told him the efforts made to take the lady to hospital had been futile. He went to the scene and found the deceased who was being supported by the accused person



who was tied on the hands with ropes and belts. That, the OCS Siakago Police Station, arrived shortly thereafter. He stated that the deceased had a swollen forehead and legs. That he tried to follow up on what had happened and the accused told him that the deceased was unfaithful and that is why he was disciplining her. On cross examination, he stated that he did not see the accused beating the deceased but when they went to their house, they found sticks and the accused told them that he is the one who beat the deceased.

4. PW3, P.C Peter Ritho stated that on the 2/8/2021 he was with the OCS, Siakago Police Station C.I Lawrence Njoka who informed him of an incident that had happened. He requested him to accompany him to the scene at Ciany village and on arrival, they found members of the public who had gathered and the accused person herein who had assaulted the deceased, who was seated on the road, but by then she was still alive. The deceased was bleeding from the head, hands but she was not talking while the accused was sober and was just standing there and did not have any injuries himself. They went to the home of the accused where he was living with the deceased and inside the house, there was blood all over, a blood-stained stick and a metal rod. He recovered the items and handed them over to the investigating officer. In his further evidence upon being re-called, he stated that they recovered four (4) wooden sticks, a metal rod and one dress that had blood stains which had black and white stripes which he identified and were all marked for identification.

In cross examination he stated that what they recovered was a blouse and not a dress. That he could not tell whether a D.N. A test was done on the blood stains that were found on the blouse and wooden sticks.

5. PW4, Dr. Job Mwaniki, a registered medical practitioner stated that he performed post-mortem on the body of the deceased, Lucy Muthoni on the 7th August, 2021 at Gakwegori Funeral home. On examination, there was left sided special bruise measuring 2cm by 5 cm, an injury on the left side angle of the mouth, left special injury and bruising on the interior knee bilaterally measuring 2cm x 5 cm and also left lower anterior chest was bruised measuring 2cm x 5 cm. On internal appearance, in the head, there was a left temporal parietal occipital sub-dural haematoma. In his opinion, the cause of death was cardiopulmonary failure secondary to blunt force trauma to the head, resulting in left temporal parietal occipital sub-dural hematoma. In cross examination, he stated that the blunt trauma could not be caused by a fall. That the injuries were caused by same item repeatedly and that the cause of death was blunt trauma and bleeding. That the injuries were sustained before the deceased died.
6. PW5, Stephen Gitonga Masiaki stated that on the 2/8/2021, he left home at around 6.00 a.m to Siakago market to buy Muguka. That before he got to Cianya, he found people on the road and they stopped him so that he could assist in taking the deceased to hospital. A man was carrying a lady on his shoulder and he requested for his assistance to take her to hospital but he told him he was in a hurry and was unable to assist her.
7. PW6, C.I Lawrence Njoka stated that on the 2/8/2021 at around 6.00 a.m he was in the office at Siakago Police Station, when he received a call from the area, Assistant Chief, Gitibugi, a Mr. Mbaka who told him that on the way to Embu, there was a man whose hands were tied by members of Public and that besides the man, there was a lady who appeared dead. In the company of other officers, they went to the scene and found a woman lying besides the accused person. The deceased was rushed to hospital. He arrested the accused person and they went to his house and upon carrying out a search, they recovered some blunt objects which were wooden sticks and some of them had blood stains. The accused person was handed over to the D.C.I officers for investigations. He went to Hospital and found that the deceased had died. When he saw the deceased on the road, she had bruises on the head. On cross-examination, he stated that he found the wooden sticks and metal rods in the accused persons's house.



8. PW7, P.C Hilary Yegon stated that he was the investigating officer having taken over the case from P.C Brian who resigned from the National Police Service. He stated that upon taking over, he was handed over the exhibits which were 2 wooden sticks, a metal rod, post mortem form and a psychiatrist report. He bonded the witnesses and the accused was charged with the offence of murder.
9. At the close of the prosecution's case, the accused person was placed on his defence. He gave his evidence on oath and stated that on the night of the incident, he quarrelled with his wife, who is the deceased in this case, and they fought each other and in the process the deceased fell and he left her and went away. That the deceased beat him with a piece of wood but he was able to duck and in self-defence he pushed her and she fell on her back. That when he went back home the following morning, he found her lying on the same spot that he left her. That he looked for means to take her to hospital but he was not lucky to get any means or anyone willing to assist. That he carried his wife to the road and as he was still waiting for help to take the deceased to hospital, the Chief went to the scene and he was arrested and the wife was taken to hospital by police officers. That after five (5) hours he received information that the deceased had died. He stated that he did not intend to kill the deceased.
10. After the close of the defence case, the Court gave directions on filing of final submissions but only the prosecution filed its submissions.
11. In its submissions, the prosecution relied on the case of Antony Ndegwa Ngari Vs. R (2014) eKLR where the elements of the offence of murder were outlined as stated under section 203 of the Penal Code. On the proof of death it relied on the case of R Vs Stephen Sila Wambua (2017) in which the Court found that any death is unlawful unless it is authorised or excused by the law or committed in execution of a reasonable defence of property or self defence. It made reference to Article 26 (1) (3) of *the constitution* of Kenya 2010. Reference was also, made to the case of Guzambizi Wesonga Vs. R (1948/15 EACA 63 on what Constitutes homicide. On the element of malice aforethought, the prosecution relied on section 206 of the Penal Code, on when malice aforethought shall be deemed to have been established. The prosecution urged the Court to find that it has proved the case of murder against the accused person and urged the Court to convict him accordingly.
12. The issues for determination is whether or not the offence of murder has been proved beyond reasonable doubt.
13. 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 contrary to section 203 as read with section 204 of the penal code. The burden of proof lay on the prosecution to prove beyond reasonable doubt that the accused murdered the deceased. Section 203 of the Penal Code provides the elements of the offence as follows:

“ Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder”
14. In the case of Republic Vs. W.O.O (2020) eKLR Migori High Court Criminal Appeal Number 26 of 2017 the elements of murder were explained, as guided by the Court of appeal in the case of Antony 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 death.



- b) that the accused committed the unlawful act which caused the death of the deceased and
 - c) that the accused had malice aforethought.
15. On the first element of death, PW4 testified that he performed the post-mortem on the body of the deceased on the 7/8/2021, at Gakwegori funeral home and formed the opinion that the cause of death was cardiopulmonary failure secondary to blunt force trauma to the head resulting in the left temporal parietal occipital sub-dural haematoma. He observed that the deceased had sustained injuries on the left side of the mouth, on the knees, on the chest and on the head.
 16. Though there was no eye witness at the scene, it was PW1's evidence that on the 2/8/2021 the accused who was the deceased husband went to his house at 6.00 a.m and told him that they had quarrelled with the deceased and they had fought and that the deceased was in bad condition. PW1 advised him to go and report the matter to the police and to take the deceased to hospital. The accused managed to carry the deceased upto the road as he tried to get assistance to take his wife to hospital. PW2 received a call from a resident of that area who told him that there was a certain person who was on the road with his wife and she was looking like she was dead. He went to the road and found the accused and his wife as the accused was trying to get means to take his wife to hospital.
 17. In his evidence, PW3 testified that he was on duty at Siakago Police Station when he was requested to accompany C.I Lawrence Njoka to the scene at Cianyvi village. At the scene he found members of Public who had gathered and the deceased who was seated on the road and the accused person who was standing besides the deceased but he did not have any injuries himself. They went to the house of the accused where he was living with the deceased as a husband and wife and inside the house, there was blood all over, sticks and a metal rod. This evidence was corroborated by PW6 who was among the officers who went to the house of the accused on the date of incident. He stated that they recovered wooden sticks which were blood stained.
 18. When the accused person was placed on his defence, he admitted having quarrelled and fought with the deceased on the night of 2/8/2021 after which he pushed her and upon her falling the accused left the house until the following morning when he went back and found her lying on the same spot where he left her the previous night. According to him, the reason for the quarrel was because the deceased was unfaithful to him.
 19. From the evidence of PW4, the cause of death of the deceased was consistent with the injuries that the deceased sustained which were inflicted by the accused person on the fateful night. Though in his evidence he stated that the deceased hit him with a stick, the witnesses who saw him that morning stated that he did not have any injuries on him, and in any event, in his defence he stated that when the deceased tried to hit him with a stick he ducked and, therefore, it is not true that the two of them fought. What comes out from his own evidence and that of PW4 is that he fought the deceased and he inflicted injuries on her that caused her death.
 20. On the element of malice aforethought, the prosecution must prove beyond reasonable doubt that the accused person intended to cause the death of the deceased. The accused in his defence stated that he did not intend to kill the deceased . Malice aforethought is defined and well explained in Section 206 of the Penal Code .

“ Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances;



- a. an intention to cause the death of or to do grievous harm to any person, whether that person actually died or not;
- b. knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused.
- c. an intent to commit a felony
- d. An intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony. “

21. Further, the Court in *Republic Vs Njeru & 3 others (Criminal Case number 2 of 2019)* (2023) KEHC 19141 (KLR) stated as follows;

“The Court of appeal in *Bonaya Tutu Ipu & Another Vs R* (2015) eKLR stated as follows on the prove of malice aforethought;

“it is in rare circumstances that the intention to cause death is proved by direct evidence. More frequently, that intention is established by or inferred from the surrounding circumstances.

22. That being said, from the foregoing, malice aforethought can be strongly inferred from the evidence through the injuries that were inflicted on the deceased. There is also the fact that the murder weapons were recovered from the accused person’s house and he admitted having inflicted the injuries on the deceased which caused her death.

23. The prosecution has proved it’s case beyond reasonable doubt. I find the accused person guilty of the offence of murder contrary to section 203 of the penal code and is hereby convicted accordingly.

24. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 27TH DAY OF AUGUST, 2024.

L. NJUGUNA

JUDGE

..... for the State

..... for the Accused person

