



**Republic v Muturi (Criminal Case 5 of 2014)  
[2024] KEHC 11144 (KLR) (25 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11144 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CRIMINAL CASE 5 OF 2014  
RM MWONGO, J  
SEPTEMBER 25, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**JOHN MURIITHI MUTURI ..... ACCUSED**

**JUDGMENT**

1. The accused person is charged with murder contrary to Section 203 as read with 204 of the Penal Code. The particulars of the offence are that on the 9<sup>th</sup> of February, 2014 at Kabonge village in Kirinyaga West district within Kirinyaga County, he unlawfully murdered Mary Waruguru Ndungu.
2. The prosecution availed six (6) witnesses, and after the close of their case, the accused was put on his defence. The accused gave sworn testimony, but did not avail any witnesses. Parties filed written closing submissions.
3. The prosecution case was as follows.
4. PW 1 Dr. Kamiti Muchiri testified that his colleague Dr Kariithi from Karatina Hospital he performed the post –mortem on the deceased’s body. He stated that Dr MKariithi had proceeded for his post-graduate studies, but that he knew his writing. Upon the non-objection by defence counsel, Dr Muchiri testified upon the posrt mortem. He noted that Dr Muchiri concluded that the cause of death was multiple injuries to the deceased’s head and chest due to severe blunt trauma. A Death Certificate No. 453722 was signed and issued on 14/2/2014. He produced the post mortem report as P. Exb 1.
5. PW-2 Salim Ndun’gu Muiruri testified that he knew that his deceased grandmother would drink and sometimes come home late. Thus, when she did not show up on the 9th February 2014, he got very concerned. He therefore went out that evening searching for her at places he knew she frequented. Eventually, he found her at about 9:30 pm and noted that she did not look very drunk.



6. He left her but the following day after frantic efforts to know why she had not turned up the previous day he found her “leso”, on the road leading to her home. It was the same “leso” she had on her head when he saw her the previous night. On a closer look, he discovered her Jacket and before long he stumbled on her half naked body. It had injuries, and in particular he noticed injuries on her face on the eye that had a stick stuck in it, and blood oozing out.
7. He raised the alarm and people gathered around. It was then about 8.00am when they went to report at Kabonge Police Post, and a report was made at Baricho Police station. The police from Baricho visited the scene and then took away the body.
8. PW2 further stated that on 10<sup>th</sup> February, 2014, the accused was arrested by members of the Public as his shirt had blood on it believed to have been that of the deceased. He was able to identify the shirt as MFI 3. He said he believed the accused was the perpetrator as he had threatened the deceased with dire consequences the previous day. He stated that they had a bad relationship due to a land dispute.
9. In cross examination, PW3 stated that the deceased used to tell him that the bad relationship between the accused and the deceased was due to a land dispute. He admitted that he did not see the accused on the material day
10. PW3 No 69531 PC Daniel Kiragu, was the Scene of Crime officer. He testified that it was he who photographed the body of the deceased, processed the pictures and made the necessary certificate. He produced the photographs as PExb 4(a-d), and a Report thereon as PExb 5.
11. PW 4 (Peterson Ndege) gave evidence that he was with the deceased on the 9<sup>th</sup> February, 2014 at Kiamanyeki Club, a bar. He recalled having shared a drink and light moment with her. He stated that on the same day he saw the deceased’s grandson looking for her, but by that time they had long parted ways. He said he did not see the accused that night and he did not know how the deceased met her death.
12. PW- 5 Elizabeth Waithera Oyiogo, an analyst at the Government Chemist, also testified. She tendered evidence of her finding that the DNA profile from the Shirt of the accused – marked J1 (John Muriithi) – matched the DNA profile from blood sample K1 indicated as that of the accused.
13. She stated that the bloodstains on the shirt belonged to the accused, and further, that the deceased’s top was bloodstained with the blood of the deceased. The items matched the blood of the person said to be the owner: that is of the deceased and the accused.
14. PW 6 Sgt Patrick Ithiru of Baricho Police Station, testified that he went to the scene of crime on 10/2/2014 at around 10.00 hours with Inspector Duale. They found the body of a female aged about 60 years with injuries to the abdomen, face and stomach. The body was about 100m to the deceased’s home. In the left eye there was a stick of about 6 cm that had entered. It was removed by the doctor in his presence. They then took the body to Karatina mortuary.
15. He confirmed that the accused was arrested by members of the public after he was found with a blood-stained shirt at his home at Kabonge Village. He stated that it was he who re-arrested the accused, and that the shirt which was blood stained was taken and subjected to the Government Analyst for examination.
16. In cross-examination, he stated that before the accused was charged, the government Analyst report was not ready. He confirmed that there was no relationship between the blood of the deceased and the shirt.
17. The accused was put on his defence after the court ruled that he had a case to answer.



18. In his defence, the accused gave a sworn statement. He testified that on the night of 9<sup>th</sup> February 2014 he arrived home at about 12.30am after having had a drink at Central Bar with a friend called Mwangi. He then went to sleep.
19. On 10<sup>th</sup> February, 2014 he was awoken by screams and noise near his house. He went to the road and found a body surrounded by people. He was arrested by boda boda riders who accused him of killing the deceased. He was frogmarched to his house where they conducted a search. They found his clothes with blood stains. He said he had had a nose bleed
20. He was then taken to the police station. The blood-stained clothes were taken for testing at the government chemist. According to him, the Government Chemist testified that there was no relationship between his blood and that of the deceased.
21. He further stated that the deceased was his aunt and they had a good relationship.
22. In cross examination, he stated that he was not able to get Mwangi to testify as he did not tell his lawyer about him. He stated that he heard screams and went to check. He denied that he had threatened the deceased, or that he had had any disagreement with her, and there was no report of any such threat.
23. The parties filed submissions as directed by the court.
24. The prosecution submitted that the deceased and the accused were related as the deceased was the accused's aunt with their home only separated by a fence as is captured in the Pre-Bail Report dated 13th March 2018.
25. Further, the state pointed out that the shirt that was stained with blood was discovered by members of the public and it should not be lost that he had warned the deceased with dire consequences as was stated by PW2 Salim Ndun'gu.
26. As to the cause of death, PW 1 Doctor Kamiti Muchiri, had formed the opinion that the deceased died due to severe injuries to the head and chest due to severe blunt trauma.
27. The accused submitted that for the Prosecution to secure a conviction on the charge of murder, it has to prove three ingredients against an Accused person.
28. That the death of the deceased occurred: There was no contention as to the death of the deceased. The post-mortem form PEXH. 1 produced by PW1 confirms cause of death was multiple injuries to the head and chest due to severe blunt trauma.
29. That the accused committed the unlawful act which caused the death of the deceased: The accused did not concede that he committed the unlawful act which caused the death of the deceased. The prosecution was unable to place the accused person at the scene of crime or show any connection between the accused person and the said death. As a matter of fact, the forensic evidence disputes that the accused had anything to do with the murder of the deceased person.
30. At the scene of crime there were beer bottles, and it would be expected that finger prints would be lifted for purposes of identifying if there was any other person at the scene prior to the death of the deceased, but this was not done. Again, no finger prints were lifted from the stick that had punched the deceased's left eye.
31. Thus, the investigations conducted were short of what is expected in a serious murder scene. Both PW2 and PW4 stated that the accused was never at the bar on 09/02/2014 and none of them saw the accused with the deceased on the material day. There was thus no inference that the accused person was at the scene of crime.



32. The reliance is placed on an alleged enmity, between the accused and the deceased to prove the guilt of the accused person left a lot to be desired from the investigations of the police officers. It was submitted that the prosecution's case was initially based on suspicion since the accused person was arrested even before the DNA analysis was conducted. The report absolved him of causing the deceased death as there was no DNA match.
33. That the accused had malice aforethought: The accused submitted that in the absence of actus reus, there was no need to dwell on the mens rea. The accused had nothing to do with the death of the deceased.

### **Issues for Determination**

**The issues for determination are as follows:**

1. The DNA Analysis and what it means
2. Whether the accused is liable for the murder of the deceased.

### **Analysis and Determination**

34. For the Prosecution to secure a conviction on the charge of murder, it has to prove the four main ingredients of the offence as stated in Republic v Safari Katana Lugo [2021] eKLR:
  - (1). Death of a human being.
  - (2). The death was caused by some unlawful act, by the accused.
  - (3). That the stated unlawful act was actuated by malice aforethought.
  - (4). That in all circumstances it was the accused so charged who committed the crime of death.

### **The death of the deceased occurred**

35. As there is no contention as to the death of the deceased, there is little to analyse. The post-mortem report PExb. 1 produced by PW1 confirms cause of death was multiple injuries to the head and chest due to severe blunt trauma.

### **The DNA Analysis and what it means**

36. The DNA analysis was done by PW 5 Elizabeth Oyiengo. She is a holder of BSc and MSc degrees, and has been a government analyst for 24 years. In her oral testimony she said she received blood samples and a blue shirt (J1) of the accused and the deceased's white top. She then went through the report of her analysis and produced it as PExb 6a and the Exhibit Memo as PExb 6b.
37. Her report PExb 6a states as follows:

Items Received

On the 17<sup>th</sup> day of February 2014 at the laboratory of the Government Chemist's Department Nairobi, the items listed below were received from No. Cpl 66271 Patrick Ithili of Baricho Police Station.

Item M1: Blood sample in a test tube marked 'M1' indicated as of deceased Mary Waruguru.

Item J1: A light blue shirt in a khaki envelope marked 'J' indicated as of accused John Muriithi Muturi.

Item K1: Blood sample in a test tube marked 'K1' indicated as of accused John Muriithi Muturi.



Item L1: A cloth (ladies white top) a khaki envelope marked 'L1' indicated as of deceased Mary Waruguru.

It was desired to examine the items listed above and determine the presence and origin of blood stains.

Report:

1. The shirt (Item J1) and the cloth (Item L1) were moderately stained with blood of human origin.
2. The DNA profiles generated from the listed items are tabulated and produced at the end of this report.

### **Conclusion and Opinion:**

1. The DNA profile generated from the blood stains on the shirt (Item J1) indicated as of accused John Muriithi Muturi matched the DNA profile generated from the blood sample (Item K1) indicated as of accused John Muriithi Muturi with a probability of a match in  $1.606 \times 10^{19}$
2. The DNA profile generated from the blood stains on the cloth (Item L1) indicated as the deceased Mary Waruguru matched the DNA profile generated from the blood sample (Item M1) indicated as of deceased Mary Waruguru with a probability of a match 1 in  $8.477 \times 10^{21}$
38. She stated that she produced the shirt and lady's top (MFI3 and MFI 7. She stated that:  

“They are the items I received. The blood stains on the shirt belonged to the accused. The lady's top was bloodstained with blood of the deceased. The items matched the blood of the person said to be the owner; that is of the deceased and of accused.”
39. From the foregoing, the DNA analysis of blood on the accused's shirt was indicated to be that of the deceased.  

That the accused committed the unlawful act which caused the death of the deceased
40. Whilst the prosecution did not place the accused person at the scene of crime, the DNA analysis shows the connection between the accused person and the deceased's, thus her death.
41. The submissions of the defence that the DNA analyses of the accused's shirt did not match with that of the deceased is not borne out by the report of PW5 the government analyst.
42. PW 2 testified that he did not find the accused at the scene of the crime but believed that he was the perpetrator as he had threatened the deceased with dire consequences the previous day. They had a bad relationship due to a land dispute.
43. The statement by PW 6 that there was no relation between the blood on the lady's top and that on the accused's shirt is not in tandem with the evidence of PW 6, the expert, and the report PExb 6. Consequently, the report does not absolve the accused from causing the deceased death.
44. The accused testified that his blood-stained clothes were taken for testing at the government chemist. The government chemist testified that there was no relationship between his blood and that of the deceased.
45. There was also the accused's own evidence that he returned home on the material night on the night of 9<sup>th</sup>- 10<sup>th</sup> February 2014 just after midnight. This, in my view gave the accused the opportunity to commit the murder. The fact that the accused states that he was with one Mwangi that night appears to be an attempt at an alibi. However, it is clear that the accused did not even bother to notify his lawyer that he was with the said Mwangi that night.



### **Whether the accused had malice aforethought**

46. In *Republic v Juma Kituko Mwambegu* [2020] eKLR it was stated that:

Malice aforethought is defined in Section 206 of the Penal Code in the following terms:

- (a). An intention to cause death or to do grievous harm to any person whether such person is the person actually killed or not.
  - (b). Knowledge that the act or omission causing death will cause the death of or grievous harm to some person, whether such person is the person 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 be caused.
  - (c). An intent to commit a felony.
  - (d). An intention to facilitate the escape from custody of a person who has committed a felony.
47. PW2- He testified that there was bad blood between accused and the deceased. He suspected that he had killed her as he had previously threatened her with a panga. The defence assertion that there was no evidence produced to prove these allegations cannot stand in light of the DNA analysis. It is not reasonable to expect that every time there is a threat to a person, then there would be a report to the police.

### **Conclusion and Disposition**

48. the evidence of the accused that when the police arrested him and searched his house they found his blood-stained shirt, in my view seals his fate. Although he explained the blood by saying he had a nose-bleed. The DNA evidence of the blood matched it with that of the deceased. There is therefore no doubt in my mind that the deceased's death is connected to the accused.
49. The accused's alibi that on the night of February 9<sup>th</sup> February 2014 he was with one Mwangi has all the characteristics of an afterthought as earlier stated. To successfully maintain the defence of of alibi, one has to prove the same and invoke sufficient doubt in the court's mind to benefit the accused with an acquittal.
50. In the end, the evidence points to the accused as the perpetrator of the killing. However, as there is no malice aforethought proved, his action cannot be pinned to the offence of murder. Whilst I am satisfied that the accused did the act, o malice is evident.
51. I therefore find and hold that the accused carried out the killing, and hereby convict him with the offence of manslaughter.
52. Mitigation shall be on a date to be fixed.
53. Orders accordingly.

**DATED AT KERUGOYA THIS 25<sup>TH</sup> DAY OF JULY 2024**

**R. MWONGO**

**JUDGE**

**In the presence of:**

1. Accused John Muriithi Muturi in person



2. Wambui for the Accused
3. Mamba for the State
4. Murage, Court Assistant

