



**Republic v Muchira (Criminal Case 2 of 2016)
[2024] KEHC 13078 (KLR) (30 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13078 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE 2 OF 2016
RM MWONGO, J
OCTOBER 30, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

PAULINE WAWIRA MUCHIRA ACCUSED

JUDGMENT

Brief facts

1. The accused person is charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on the night of 27th January, 2016 within Kerugoya Township, Kirinyaga County, she unlawfully murdered Police Constable Joseph Abonyo Marambah. It was adduced that the accused person fatally injured the Police Officer with a kitchen knife at her rented house in Kerugoya Township. The deceased succumbed to the injuries at Kerugoya Medical Centre situated at Kibingo area.
2. When arraigned on 8th February 2019, the accused denied the offence and the trial commenced. The prosecution lined up ten (10) witnesses and the accused gave sworn testimony in her defence.

The Prosecution case

3. PW- 1 Maurice Wachira Muthoni is a boda boda rider who stays at Kimandi but works in Kerugoya town. He testified that on the 27th January 2016 at about 9pm, he saw two people outside a corridor close to where they usually pick passengers. The lady called him and requested to be taken to Kibingo at Kerugoya Medical Centre. He agreed and ferried the two of them. He could hear them talking but was unable to grasp what they were saying due to strong wind. On reaching the hospital he saw a lot of blood on his boda boda. The lady stayed long so he went into the centre. He was able to see the injuries on the chest of the deceased even though the deceased looked uncooperative with the doctors.



4. While at the hospital he had heard the accused asking the deceased why he had stabbed himself. He was pushing away the doctors when they tried to hold him. PW1 recognised the man as a policeman. So, he called a policeman friend of his called Mutegi and told him. After a short while a police car came with several policemen including Mutegi. He identified the accused in the dock.
5. PW-2 Dr. Ndirangu Karomo is the doctor who performed the Post Mortem on the deceased. He formed the opinion that the cause of death was respiratory arrest secondary to massive internal haemorrhage inflicted by a sharp object.
6. PW-3 Dr. Elijah Kakai is the doctor who received the deceased at the Kerugoya Hospital on the 27th January, 2016. He testified that he was called by a nurse at the Hospital at about 2200 hrs. On arrival he found the patient (deceased) was very sick. The lady friend who accompanied him said the patient stabbed himself with a kitchen knife. He was able to observe that the deceased's blood pressure was unrecordable as he had lost a lot of blood.
7. Dr. Kakai noted that the injuries were on the abdomen around the 6th - 7th ribs. The wound was about 3 centimeters wide and the deceased was indeed in a critical condition. He testified that he tried to put the deceased on oxygen with a dose of adrenaline resuscitation but it was not successful. The deceased lasted only 20 minutes before he passed away. At the time he was attending to the deceased, he said, he was accompanied by a lady who had escorted him to the facility. He certified the deceased dead and issued a death certificate.
8. PW-4 (No 85527 CPL Georgina Syokau is a Police woman who was then attached to Kerugoya Police Station. She, the OCS and a Police Driver visited the accused's house and confirmed that there was indeed blood soaked on a three-seater sofa set in the house of the accused. She recovered the kitchen knife with blood stains, and clothes of the accused including a T-shirt, trouser, and her under wear that were soaked with blood. All these she handed over to the investigating officer.
9. PW4 produced the knife as PExb 3, T-shirt as PExb 4, maroon trouser Pexb 5 and white under wear PExb 5.
10. In cross- examination, she testified that the accused told her that the deceased had stabbed himself in the bathroom and that the accused led them to the bathroom which was outside the house, but there were no blood stains. She said that she had seen that the deceased had an injury on his side that he did not have any other injuries.
11. PW-5 Elizabeth Waithera Otieno is a Government Analyst. She stated that she received several items from PC Samson Osamba of CID Kirinyaga Central on 5.2.2016. The request was to examine the exhibits and determine the origin of the blood. On doing a DNA analysis, the profile generated from the knife, T-shirt, trouser and underwear all matched the DNA profile generated from the blood sample indicated as being the deceased. She produced the Government Analyst Report and confirmed that samples taken from the exhibits and blood matched that of the deceased.
12. PW- 6 Ephantus Gachoki Kabira who lived in Kerugoya, is a driver of the clerk of Kirinyaga County Assembly. The accused was his neighbour for four months. He came to know the deceased who used to visit the accused. On 28/1/2016 at about 10.30 PM he was heading to his home when he was informed by a watchman that the deceased had been stabbed with a knife and rushed to the hospital by the woman he used to visit. He did not witness the incident.
13. PW- 7 Dr. Joseph Thuo, a Psychiatrist at Embu Level 5 Hospital since 2002, conducted a mental assessment of the accused. He confirmed that she was normal and fit to stand trial. She had an insight



- as to why she was arrested and her intelligence was normal. He produced her examination request and report as PExb 7 (a) and 7 (b).
14. PW-8 PC Daniel Kiragu was stationed at DCI headquarters Embu, as a scenes of crime officer. He took 8 photographs of the scene where the deceased was killed. He produced them as PExb 8 (a) - (h). Photo No.8 shows a stab wound on the body of the deceased.
 15. PW 9 P.C. Michael Kobe testified that in 2016 he was stationed at Kerugoya Police Station. On the material day he went to the accused's house after receiving a restless and panicked call from her as she was crying. When he went, he did not find the accused but found many people at the house and blood stains near the door. He was informed that the accused had taken the deceased to hospital with boda boda rider. He went to Kibingo Medical hospital and he found nurses attending to the deceased. The deceased died within twenty minutes of being taken to the theatre. PW9 detained the accused. He then accompanied the OCS to the accused's house where they found things scattered and blood in the sofa seats and on the floor.
 16. Corporal Nicholas Chigiri, the investigating officer in this case, testified as PW- 10. He stated that he received a call from the DCIO Mr. Kenduiwa to the effect that the deceased had been stabbed. He found the deceased at Kerugoya Medical Centre unconscious and bleeding from a stab wound from the chest-right hand side. They were then informed by the doctor that the deceased had died. They arrested the accused at the hospital and questioned her on the incident. She said that the accused had stabbed himself in her house.
 17. They went to the accused's house and found the knife on the table. It had blood stains. A three-seater sofa-set was also soaked in blood. According to him the recovery of the knife in the accused's house connects her to the offence.
 18. In cross-examination, he testified that the accused was the deceased's girlfriend although he had a wife who stayed at his rural home. He said that he was not aware of any dispute between the accused and deceased. Further, he stated that the deceased was drunk on the fateful night, but he was not aware of him taking bhang. He was also not aware that the deceased punched hospital staff so as not to be treated.
 19. PW10 stated that if the deceased had wanted to commit suicide, he would have gone to his house. Further, the accused had neighbours had not indicated hearing any commotion coming from the accused house. There was no struggle between the deceased and accused. He confirmed that it was the accused who took the deceased to hospital.
 20. The defence case was made out solely by the accused, Pauline Nyawira. She testified that the deceased was her boyfriend, though she was aware he had a wife called Lydia. She stated that on 24th January, 2016, his wife came from Kisumu to meet him. He refused to meet her. They met on the next day at the police station and had a big argument. As a result, Lydia became annoyed, banged the door and said they should separate.
 21. The Accused testified that on 27th January, 2016 the deceased had been drinking alcohol and smoking bhang. They later returned to the accused's house and that he was arguing a lot. At about 9.00 pm the accused was seated on her bed. She heard him exclaim "ahh", she turned around and found him holding a knife. He said "I better die" and that the stress was too much. She got off the bed and held the knife. He did not resist, and she kept it on the table. She then took him to Kerugoya Medical Centre. He fell down at the hospital. He told the doctor that he wanted to die and wish not to be treated as he was H.I.V positive. She called officer Kombe to the hospital as the deceased was resisting treatment. They helped put him on the bed and he died a few minutes later.



22. Later she accompanied the police to her house, where they took the knife and her bloodied clothes. She asserted that she did not kill the deceased as they had a good relationship.
23. In cross-examination, she stated that she did not scream when the deceased stabbed himself. She helped him get out of the house and to the hospital.
24. The parties filed written submissions as directed by the court.

Prosecution submissions

25. The prosecution submitted that the accused was the only person with the deceased at the time of the incident that led to his demise. They were both at the house of the accused and there was no history or evidence of the deceased having been drunk or disturbed mentally as he was a Police officer, licensed to carry a firearm. From the evidence of PW-4, the bloodied knife was still at the table and there was blood soaking in a three-seater sofa set.
26. As to proof that the accused had Malice aforethought; the prosecution pointed to the choice of weapon used in assaulting the deceased, the force used to inflict the injury, and the timing of the accused in inflicting the injury. These pointed to the fury, anger and knowledge that the accused wanted to maximize the opportunity to eliminate the deceased at whatever cost.
27. The evidence on record clearly showed that the deceased had stab wounds on the abdomen around 6th - 7th ribs. The wound was about 3 centimetres. The accused did not raise alarm to alert the neighbours who would have assisted if indeed the deceased inflicted the injuries to himself. The accused also knew that the deceased was a Police officer and she did not alert the Station when she noticed that he was in a critical condition or that he had stabbed himself.
28. Neither the nurse nor the Doctor PW-3 (Elijah Kakai) testified or confirmed that the deceased tried to resist treatment as was alleged by the accused. The doctor's finding at the Post Mortem was in tandem with the evidence of the prosecution witnesses who witnessed the stab wound on the deceased.
29. Finally, the prosecution submitted that the accused had the intention to cause death or grievous bodily harm to the deceased. This indeed led to the untimely death of Joseph Abonyo Marambah because of the nature of the weapon used, the part of the body targeted, and the manner in which the weapon was used. The conduct of the accused before, during and after the incident confirms her state of mind towards the crime.

Defence submissions

30. The defence submitted that for the prosecution to secure a conviction on the charge of murder, it had to prove three ingredients against an accused person, as stated in the case of Anthony Ndegwa Ngari vs Republic [2014] eKLR, where the court stated the elements of the offence of murder as to be that:
 - “ a) the death of the deceased occurred;
 - (b) that the accused committed the unlawful act which caused the death of the deceased; and
 - (c) that the accused had malice aforethought.
31. As to the death of the deceased: This was not disputed. The post mortem produced as P.Exb 1 by PW2 confirms that the deceased "died of cardio-respiratory arrest secondary to massive internal haemorrhage inflicted by a sharp object."



32. . With regard to whether the accused committed the unlawful act which caused the death of the deceased: The defence pointed out that the accused did not concede to committing any unlawful act which caused the death of the deceased. The prosecution on the other hand was unable to prove that the accused person committed any unlawful act causing 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.
33. The post mortem form prepared by PW2 revealed that the cause of death was cardio-respiratory arrest secondary to massive internal haemorrhage inflicted by a sharp object. At the scene of crime there was the knife. No finger prints were lifted from the knife that had punctured the deceased's chest right side, to show that the accused had committed the act.
34. Further PW10 the Investigating Officer, never bothered to forward the knife to a forensic fingerprint examiner to establish who wielded the knife that caused the death of the deceased. This was an obvious step that ought to have been done. The investigations conducted were short of what is expected in a serious murder investigation.
35. In addition, PW1 in his testimony corroborated what the accused person stated during her defence that the deceased refused to receive treatment. PW1 stated that,

“The man was pushing away the doctors when they tried to hold him.”
36. In his testimony, PW3 provided no insight on what happened on the material day apart from stating that he attended to the deceased and he was unable to save his life. Equally, PW4 during cross-examination stated that the accused stabbed the deceased yet no other witnesses came to that conclusion. She was actually at the police station as the crime standby duty officer when she was informed by P.C Kobia of the situation. She was not the investigating officer and she did not conduct her own independent investigations to arrive at that conclusion.
37. The Government Analyst, PW5 confirmed that the accused's clothes were soaked with the deceased's blood. The same was confirmed by PW1 who is not an expert. This merely confirmed what the accused said, that she assisted the deceased to go to hospital and an obvious by-product of helping him while he was bleeding profusely was that she would be soaked in his blood. He had sat behind her on the motorbike.
38. PW10 the investigating officer also confirmed that the accused and the deceased had no strained relationship. Thus, there was no evidence of any fight or struggle between the accused and deceased as he found in his investigations. The investigating officer went as far as vindicating the accused when he stated, “it could mean suicide or murder” inferring a reasonable doubt in the prosecution's case.”
39. With regard to the question whether the accused had malice aforethought; the defence submitted that the accused had nothing to do with the death of the deceased. In her evidence, she stated that the deceased had not been himself and that he had actually smoked bhang on the day of his death a substance which he never usually smoked. The investigating officer never thought of obtaining blood samples to investigate whether the deceased was physically or mentally impaired by any drugs he may have consumed leading to his death. In addition, the deceased's action of rejecting treatment, an action that was witnessed by multiple witnesses consolidates the accused's innocence and testimony that the deceased wanted to die by his own wish. Her sole mistake being in her efforts to save the life of the man she loved; she ended up being charged for his death.
40. Finally, the defence submitted that the prosecution has failed to meet the well laid principle of adducing evidence with proof beyond reasonable doubt. The prosecution had failed to establish the ingredients



of murder as a means of procuring a conviction against the accused person. The accused should be acquitted.

Issues for Determination

41. The issue for determination is whether the prosecution proved the commission of the offence by the accused beyond reasonable doubt.

Analysis and Determination

42. The responsibility of the prosecution throughout the trial is to provide proof of the elements of murder as against the accused person. That burden does not shift to the accused person. For the prosecution to secure a conviction on the charge of murder, it has to prove the three ingredients against the accused person. These are:
- a) That the deceased is dead.
 - b) That his death was due to an unlawful act by the accused
 - c) That in killing the deceased accused had malice aforethought
 - d) That it is beyond per adventure the deceased death was caused by the accused. (See Republic v Gutu Sambaro Jilat [2021] eKLR)

That the deceased is dead

43. The deceased death was not disputed. PW 3 - Dr. Elijah Kakai was the doctor who received the deceased at the Kerugoya Hospital on the 27th January 2016. The injuries were on the abdomen around the 6th - 7th ribs. He tried to put the deceased on oxygen with a dose of adrenaline for resuscitation but it was not successful. The deceased lasted only 20 minutes before he passed away. He certified the deceased dead and issued a death certificate.
44. Further PW 2 - Dr. Ndirangu Karomo, the pathologist who performed the Post Mortem certified the death. In his opinion the cause of death was respiratory arrest secondary to massive internal haemorrhage inflicted by a sharp object.

That his death was due to an unlawful act by the accused

45. The prosecution submitted that the accused was the only person with the deceased at the time of the incident that led to his demise. They were both at the house of the accused and there is no history or evidence of the deceased having been drunk or disturbed mentally as he was a Police officer well licensed to carry a firearm.
46. Section 107 (1) of the *Evidence Act* places the burden of proof on the prosecution and provides that:
- “ 1) Whoever desires any Court to give judgement as to any legal right or liability is dependent on the existence of facts which he asserts must prove those facts exist.
 - 2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

47. I have carefully considered the testimony of the prosecution witnesses who testified as follows: PW- 1 Maurice Wachira Muthoni, whilst at the hospital heard the accused asking the deceased why he had stabbed himself. PW 3 - Dr. Elijah Kakai testified that the injuries were on the abdomen around 6-7



ribs. The wound was about 3 centimetres wide and the deceased was indeed in a critical condition. That he tried to put the deceased on oxygen with a dose of adrenaline resuscitation but it was not successful. That the deceased lasted only 20 minutes before he passed away. No connection was made to the accused.

48. PW-4 No.85527 CPL Georgina Syokau, was the Police Woman who visited the accused's house and confirmed that there was indeed blood on a three-seater sofa set in the house of the accused. She recovered the kitchen knife with blood stains, and blood-stained clothes of the accused. She handed over to the investigating officer. On cross-examination, she testified that the accused told her that the deceased had stabbed himself in the bathroom. According to PW4 the accused led them to the bathroom which was outside the house but there were no blood stains. The deceased had a single injury on the side, and no other injuries.
49. The evidence read together with the evidence of PW1, the boda boda rider who carried both the accused and deceased to hospital, explains the accused's blood-stained clothes.
50. PW- 10 Corporal Nicholas Chigiri. He is the investigating officer in the case. He testified that the accused told him that the deceased had stabbed himself in her house. They went to her house and found the knife on the table. It had blood stains. The three-seater sofa-set was soaked in blood. The recovery of the knife in the accused's house connects her to the offence. Further, he testified that the deceased was drunk on the fateful night but he was not aware of him taking bhang. The defence admitted that the deceased had a stab wound but the prosecution did not make any effort to connect the accused to the offence.
51. The post mortem form prepared by PW2 revealed that the cause of death was cardio-respiratory arrest secondary to massive internal haemorrhage inflicted by a sharp object. Although the knife was found at the scene of crime no finger prints were lifted from the knife to show that she had punctured the deceased's chest right side. Indeed, there is no evidence of the accused stabbing the deceased was availed. Thus, the prosecution has not managed to connect the accused with the offence of killing the deceased.
52. With regard to motive or intent for murder the investigating officer (PW10) confirmed that the accused and the deceased had no strained relationship. Further, in his investigation he found that there was no evidence of a struggle. The investigating officer went as far as vindicating the accused when he stated, "it could mean suicide or murder" inferring a reasonable doubt in the prosecution's case.
53. The prosecution relied on the doctrine of "last seen" to place the deceased's death on the accused or infer that she caused the death of the deceased. That doctrine cannot be taken on its own without corroborating circumstances. In Republic v E K K [2018] eKLR the Court held as follows concerning the "last seen with the deceased" doctrine:

"Regarding the doctrine of "last seen with deceased" I will quote from a Nigerian Court case of Moses Jua v. The State (2007) LPELR-CA/IL/42/2006. That court, while considering the 'last seen alive with' doctrine held:

"Even though the onus of proof in criminal cases always rests squarely on the prosecution at all times, the last seen theory in the prosecution of murder or culpable homicide cases is that where the deceased was last seen with the accused, there is a duty placed on the accused to give an explanation relating to how the deceased met his or her death. In the absence of any explanation, the court is justified in drawing the inference that the accused killed the deceased." (Emphasis added)



54. In the present case, the accused stated that the deceased stabbed himself in her house, and that she was the one who took him to the hospital. She stated that he was having relationship difficulties with his wife, and that he had smoked bhang. She said he helped him get out of the house and to hospital. It was she who called the boda boda rider PW1 who took them to hospital. Once she arrived at hospital it was, she who called officer Kombe to come to the hospital as the deceased was resisting treatment. They helped put him on the bed and he died a few minutes later.
55. In my view, the accused gave a sound and plausible explanation as to how the death occurred. Nothing points to her complicity in the stabbing.

Whether the accused had malice aforethought

56. Finally, the prosecution has a duty to prove malice aforethought on any of the circumstances stated under section 206 of the Penal Code. Under that section, malice aforethought is 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 is the person actually killed or not.
 - (b) Knowledge that the act or omission causing death will probably cause death or grievous harm to some person, whether that person is the person killed or not, accompanied by indifference whether death or grievous injury occurs or not or by a wish that it may not be caused.
 - (c) an intention 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.”
57. The prosecution submitted that the choice of weapon used in assaulting the deceased, the force used to inflict the injury and the timing that the accused occasioned the injury points to the fury, anger and knowledge that the accused wanted to maximize the opportunity to eliminate the deceased at whatever cost. On its part, the defence submitted that there was no establishment of mens rea. The evidence shows that the accused and the deceased had a good relationship. To that end, the deceased had moved to the accused’s house where they lived together.
58. The investigating officer Corporal Nicholas Chigiri PW- 10 testified that the accused was the deceased’s girlfriend although he had a wife who stayed at his rural home. He said that he was not aware of any dispute between the accused and deceased. There is therefore no reason to impute intent to kill upon the accused.
59. PW 1- Maurice Wachira Muthoni testified that on the 2nd January 2016 at about 9pm, he saw two people outside a corridor close to where the usually pick passengers. The accused called him and requested to be taken to Kibingo at Kerugoya Medical Centre. She agreed to pay him 100/= for the ride. It was his testimony that he ferried the two of them and could hear them talking but was unable to grasp what they were saying. When they had alighted at the hospital, he was able to see the injuries on the chest of the deceased and he noted that the deceased looked uncooperative with the doctors and pushed them away. While still at the hospital, he heard the accused asking the deceased why he had stabbed himself, before the deceased collapsed.



60. In R *v Msuya Ngolo Lewis (Criminal Case E077 of 2021)* [2021] eKLR the High Court, dealing with the presumption of normal mental state at the time an offence was committed stated:

“In that regard, it suffices to note that, in order to prove that a suspect is guilty of a criminal offence, a prosecutor must often also prove that the suspect had a particular mens rea when committing the offence. (For example, intention, recklessness as to a consequence of the suspects actions or omission, or knowledge or belief or suspicion, of circumstances which those action or omissions take place).”

Conclusion

61. From all the evidence availed by the prosecution what is clear is that: there was no fight or struggle between the accused and the deceased; The deceased had a single stab wound on his 6th - 7th ribs. There were no other injuries found on the body of the deceased. There were no injuries on the accused; The accused took the deceased to the hospital and informed his colleagues of the incident. Further, the deceased fought doctors at the hospital as they tried to save his life; There was no evidence of intent to injure, let alone kill; and no connection can be made to the accused as the offender death.

Disposition

62. From all the foregoing, I come to the inevitable conclusion that the prosecution has not proved, beyond reasonable doubt, that the accused murdered or killed the deceased.

63. Accordingly, the prosecution’s case is dismissed and I hereby acquit the accused. She is to be set at liberty forthwith unless otherwise lawfully held.

DELIVERED AT KERUGOYA THIS 30TH DAY OF OCTOBER 2024

.....

R. MWONGO

JUDGE

Delivered in the presence of:

1. Pauline Wawira Muchira - Accused in Person
2. Mwangi - holding brief for Kagio for Accused
3. Mamba for the State
4. Court Assistant, Murage

