



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Munjure (Criminal Case 81 of 2019)
[2023] KEHC 364 (KLR) (26 January 2023) (Judgment)**

Neutral citation: [2023] KEHC 364 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE 81 OF 2019
TW CHERERE, J
JANUARY 26, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOSHUA KILERU MUNJURE ACCUSED

JUDGMENT

1. Joshua Kileru Munjure (accused) is charged with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#).

The particulars of the charge are that on September 30, 2019 at Muriri village, Tigania East Sub-County within Meru County murdered James Mutembei Mwangela (Mutembei)

2. Accused denied the offence. On September 30, 2019, Gofrey Mwiti Domisiano was working at a butchery at Muriiri market when accused's knocked the wall of eth butchery with his car a white probox. Accused proceeded to have lunch at the butchery and left but returned at about 05.00pm armed with a knife and without provocation stabbed the witness on the hand and when he ran out, he pursued him and stabbed another man that was outside the butchery, on the chest and the other man subsequently died. James Mwiti, Mutembei's brother found Mutembei lying dead at Muriiri market and did not know how he met his death. Christine Kananu Assistant Chief Athena sub-location upon finding Mutembei lying dead at Muriiri market reported the matter to police. SSP Peter Gitau visited the scene and removed the body to the mortuary. Romano Mwangera, Mutembei's father was on September 30, 2019 informed that his son, Mutembei had died of stab wounds. On October 7, 2019, he identified Mutembei's body to the doctor that carried out an autopsy at Meru Level 5 Hospital. Police on October 3, 2019 recovered some blood stained clothes from accused's house which were submitted to Government Chemists for analysis. Mutembei's blood sample and accused's jeans trousers and shirt were examined by Kimngetch Bernard, a government analyst and the jeans and shirt were found to have been stained with Mutembei's blood as shown on the report marked PEXH. 7.



Photographs of deceased were also tendered in evidence. Accused surrendered to police on October 10, 2019 and was arrested and charged.

Defence Case

3. In his sworn defence, accused stated that on the material date, his vehicle KCU 576B lost control and ran over some people at Muriiri market and stopped after knocking a wall. He stated that a crowd was baying for his blood and he ran into a butchery to seek refuge but Mutembei threatened to cut him with a panga as a result of which he picked a knife and stabbed him and escaped from the scene but surrendered to police 11 days later.

Analysis and Determination

4. Section 203 and 204 of the [Penal Code](#) under which the accused is charged provide for the offence of murder and the punishment for it. They require that the prosecution prove beyond reasonable doubt that the accused by an unlawful act or omission caused the death of the deceased through malice aforethought.
5. The sections read as follows:
 - “203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
 204. Any person who is convicted of murder shall be sentenced to death.”
6. I have considered all the evidence availed in this case as set out above and the issue in question is whether the prosecution has proved the death of the deceased; that Accused caused the said death and that he was actuated by malice.

a. The death of the deceased

7. The postmortem form PEXH. 15 reveals that deceased Mutembei suffered deep cut in the right anterior axillary area with severed axillary vascular bundle and intercostal vascular injury from which the doctor formed an opinion that deceased died of hyper anemic shock secondary to massive hemorrhage from stab wound to the chest.

b. Proof that accused person committed the unlawful act which caused the death of the deceased

8. Accused conceded he caused the injuries that led to the death of James Mutembei Mwangela

Malice aforethought

9. Whether or not malice aforethought is proved in any prosecution for murder depends on the peculiar facts of each case. (See [Morris Aluoch v Republic](#) CR APP No 47 of 1996).
10. Section 206 of the [Penal Code](#) provides as follows regarding malice aforethought:
 - “206. 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 is the person actually killed 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”.

11. In this case, PW1 stated that Mutembei was neither armed nor did he accost accused before accused stabbed him to death. Accused similarly conceded that Mutembei was not one of the persons pursuing him. Accused’s defence that he sought refuge and Mutembei who was in the butchery and whom it has not been demonstrated was aware why Accused was being pursued attempted to stab him is in my considered view not convincing.
12. That the injury inflicted on Mutembei were so severe and concentrated on the chest severing his artery can only mean that it was intended to cause him grievous harm if not death and accused ought to have known that such a serious injury could probably cause the death of or grievous harm to the Mutembei. I find that malice aforethought has been established in terms of section 206 (a) and (b) of the [Penal Code](#).
13. From the foregoing analysis, I have come to the conclusion that accused is guilty of the offence of murder and he is accordingly convicted.

DELIVERED AT MERU THIS 26TH DAY OF JANUARY 2023

WAMAE. T. W. CHERERE

JUDGE

Appearances

Accused - Present

For the Accused - Mrs. Kaume Advocate

For the State - Ms. Mwaniki (PPC)

