



**Republic v Mwarania (Criminal Case 57 of 2017)
[2023] KEHC 288 (KLR) (26 January 2023) (Judgment)**

Neutral citation: [2023] KEHC 288 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE 57 OF 2017
TW CHERERE, J
JANUARY 26, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

DAVID KINOTI MWARANIA ACCUSED

JUDGMENT

1. David Kinoti Mwarania (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 August 4, 2017 at Kithangari Location in Imenti South Sub-County within Meru County murdered Henry Mwiti Mutea

2. Accused denied the offence. On August 4, 2017, Juliet Karuru Mburugu, w/o Henry Mwiti Mutea, received information that her husband (Mwiti) had been assaulted. Later one Silas Mbae Mutea called her and Jasphe Muriuki Kiambi (Mwiti's cousin) and informed them Mwiti had died. They rushed to the scene to find Mwiti who had multiple injuries lying dead. Elias Mutwiri, Mwiti's brother saw Accused running armed with a panga only to later learn that he had assaulted his brother Mwiti who later succumbed to the injuries. IP Richard Ribai stated that Accused surrendered to police in Meru and having confessed to have murdered Mwiti was handed over to police in Nkubu where he was charged.

Defence Case

3. In his sworn defence, Accused stated that he found his wife drinking alcohol with Mwiti as a result of which a quarrel ensued and in the process of defending himself from being stabbed by Mwiti, he fought back, grabbed a panga from him and cut him severally as a result of which he died.



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. 1 reveals that deceased Henry Mwiti Mutea suffered cuts shoulder on shoulder, cuts and linear fractures on the head, deep laceration of brain, brain contusion and hematoma and severed artery of the neck from which the doctor formed an opinion that deceased died of traumatic brain injury with lacerations, diffuse subdural hematoma, multiple small intracerebral hematoma with linear skull fractures

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 Henry Mwiti Mutea.

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. That the injuries inflicted on Mwiti were so severe and concentrated on the head and neck can only mean that they were intended to cause him grievous harm if not death and Accused ought to have known that such serious injuries could probably cause the death of or grievous harm to the Mwiti. I find that malice aforethought has been established in terms of Section 206 (a) and (b) of the Penal Code.
12. 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

Court Assistant - Kinoti

Accused - Present

For the Accused - Mrs Gitonga hb for Mr. Mutegi Advocate

For the State - Ms. Mwaniki (PPC)

