



REPUBLIC OF KENYA



**Republic v Amukoya (Criminal Case 38 of 2018)
[2023] KEHC 1639 (KLR) (28 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1639 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CRIMINAL CASE 38 OF 2018
KW KIARIE, J
FEBRUARY 28, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

JOSEPH ONYANGO AMUKOYA ACCUSED

JUDGMENT

1. Joseph Onyango Amukoya is charged with an offence of murder contrary to section 203 as read with section 204 of the *Penal Code*.
2. The particulars of the offence are that on September 30, 2018, at Kanyang village in Rachuonyo East Sub County of Homa Bay County jointly with another, murdered Janet Ogowe Bala.
3. Some neighbours of the deceased were attracted to her homestead by the mooing of her cows. When they went to check, they found the deceased lying unconscious in a pool of blood. The accused who was her worker was not present. She was rushed to hospital where she succumbed to the injuries while undergoing treatment.
4. The accused in his defence denied to have known the deceased or any of the witnesses who testified. He denied any involvement in the murder.
5. The issues for determination are:
 - a. Whether the accused was an employee in the home of the deceased;
 - b. If he was whether the prosecution has established any motive for the offence; and
 - c. Whether the offence of murder was proved.



6. Samson Otieno Bala (PW4) is the son of the deceased. He testified that on August 28, 2018 he employed the accused to be a caretaker in his mother's home. His duties were to take care of livestock, crops and to ensure that his mother had eaten. This evidence was not challenged.
7. I therefore make a finding that the accused had been employed as a caretaker in the home of the deceased.
8. On September 28, 2018, Samson Otieno Bala (PW4) testified that he was in his mother's home. He received a complaint that the accused had stolen his (PW4's) mother's maize. When he questioned him about it, he said he did so because of hunger. He bought him some foodstuff and advised him to keep peace. On October 1, 2018 he learnt of his mother's injuries and that the accused had disappeared from the home. Again, this evidence went unchallenged.
9. I accordingly find that there is sufficient evidence to infer motive. The accused may have acted in the manner he did after he was accused of stealing the maize of the deceased.
10. The evidence against the accused is circumstantial. In the case of *Mohamed & 3 Others vs Republic* [2005]1KLR 722 Osiemo Judge explained what circumstantial evidence is as follows:

Circumstantial evidence means evidence that tends to prove a fact indirectly by proving other events or circumstances which afford a basis for reasonable inference of the occurrence of the fact at issue. The circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved.

11. The accused had pleaded an alibi defence. Whenever an accused person pleads an alibi, the onus is on the prosecution to prove falsity of it. In the case of *Victor Mwendwa Mulinge vs Republic* [2014] eKLR the Court of Appeal rendered itself thus:

It is trite law that the burden of proving the falsity, if at all, of an accused's defence of alibi lies on the prosecution; see *Karanja V R*, [1983] KLR 501 ... this Court held that in a proper case, a trial court may, in testing a defence of alibi and in weighing it with all the other evidence to see if the accused's guilt is established beyond all reasonable doubt, take into account the fact that he had not put forward his defence of alibi at an early stage in the case so that it can be tested by those responsible for investigation and thereby prevent any suggestion that the defence was an afterthought.

12. The conduct of the accused to escape from the home where he was employed and to deny that he was so employed, displace his alibi defence. The only logical inference to make is that he was the cause of the death of the deceased herein.
13. In order to found conviction on the evidence on record, the prosecution must prove the existence of malice aforethought. In *Black's Law dictionary*, 10th Edition malice aforethought is defined as:

The requisite mental state for common-law murder, encompassing any one of the following (1) the intent to kill (2) the intent to inflict grievous bodily harm (3) extremely reckless difference to the value of human life (the so-called "abandoned and malignant heart"), or (4) the intent to commit a dangerous felony (which leads to culpability under the felony-murder rule).



14. Section 206 of the *Penal Code* gives instances when malice aforethought may be proved. It provides:

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.

15. Since there was no evidence of what may have transpired, I find that the prosecution has not proved the offence of murder against the accused person. However, the prosecution has proved beyond any reasonable doubt the lesser offence of manslaughter. I accordingly reduce the charge of murder to that of manslaughter. I acquit the accused of the charge of murder. I find him guilty and convict him of them of the offence of manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*.

DELIVERED AND SIGNED AT HOMA BAY THIS 28TH DAY OF FEBRUARY, 2023

KIARIE WAWERU KIARIE

JUDGE

