



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Muriithi (Criminal Case 074 of 2022)
[2023] KEHC 1497 (KLR) (23 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1497 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE 074 OF 2022
TW CHERERE, J
FEBRUARY 23, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

MARTIN MURIITHI ACCUSED

JUDGMENT

1. Martin Muriithi (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 the night of 15th and November 16, 2022 at Kiathumbi village Kangeta Location Igembe North Sub-County within Meru County murdered Asteria Kathure John

1. Accused denied the offence. The summary of the prosecution case is that on the night of 15th and November 16, 2022 at about 11.30 pm, a deceased who together with others that escaped was suspected to have attempted to steal livestock from one Eunice Karambu was arrested. Eunice stated that she screamed and her neighbours among them Accused went to the scene and beat up the suspect before her employer's daughter arrived and took her away.
3. Ann Nyawira arrived at the scene to find the suspect who was in company of Eunice Karambu and her children beaten. She escorted her to the police station. Police advised her to take the suspect to hospital but she took her to sleep and the following day found that she had died. The suspect's husband and sister were informed about her death on finding November 16, 2022 and they didn't know how she died. A postmortem tendered as PEXH. 1 revealed that deceased died of severe head injury due to blunt trauma to the head. The investigating officer stated that he first arrested Eunice Karambu and Ann Nyawira but released them after Eunice implicated Accused.



Defence Case

4. In his sworn defence, Accused denied the offence. He denied having been at the scene of murder or having met the deceased and accused Eunice Karambu of giving false evidence against him.

Analysis and determination

5. 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.
6. 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.'
7. 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

8. The postmortem form PEXH. 1 reveals that deceased severe head injury due to blunt trauma to the head.

Proof that accused person committed the unlawful act which caused the death of the deceased
9. Accused was arrested after he was implicated by Eunice Karambu. Of interest to note is that on the night the deceased was assaulted, Eunice Karambu handed her over to Ann Nyawira and did although deceased was injured, Eunice did not inform Ann that the injuries were inflicted by Accused and others as she stated in her evidence.
10. The investigating officer confirmed that he first arrested Eunice Karambu and Ann Nyawira but released them after Eunice implicated Accused. The evidence by Eunice Karambu properly evaluated falls in the category of what the Court of Appeal described in *Ndungu Kimanyi vs Republic [1979] KLR 282* that:
 - ' The witness in a criminal case upon whose evidence it is proposed to rely should not create an impression in the mind of the court that he/she is not a straightforward person, or raise a suspicion about his trustworthiness, or do (or say) something which indicates that he/she is a person of doubtful integrity, and therefore an unreliable witness which makes it unsafe to accept his evidence.'
11. That Eunice Karambu implicated Accused only after she was arrested weighed together with Accused's defence in which he accused Eunice Karabu of giving false evidence against her creates an impression in the mind of the court that the witness was either being economical with the truth or was untruthful and her evidence ought to be treated with caution.
12. From the foregoing, I find that Accused person's defence denying the offence cast a reasonable doubt on the prosecution case that goes to his favour.



Malice aforethought

13. The prosecution having failed to prove actus reus', it would be futile for this court to delve into the issue of malice aforethought.

Disposition

14. In the end, I have come to the conclusion that Accused is Not Guilty of the offence of murder Contrary to Section 203 as read with Section 204 of the Penal Code and is hereby acquitted. He shall be set at liberty unless otherwise lawfully held.

DELIVERED AT MERU THIS 23rd DAY OF February 2023

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistant - Kinoti

Accused - Present

For the Accused - Mr. Gitonga Advocate

For the State - Ms. Rita (PPC)

