



**Director of Criminal Investigations v Larama (Criminal Case
E019 of 2020) [2023] KEHC 2904 (KLR) (30 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2904 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE E019 OF 2020
TW CHERERE, J
MARCH 30, 2023**

BETWEEN

DIRECTOR OF CRIMINAL INVESTIGATIONS PROSECUTOR

AND

VASCO MURERWA LARAMA ACCUSED

RULING

1. Vasco Murerwa Larama (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 October 15, 2020 at Marega village, Marega location in Tigania Central Sub-County within Meru County murdered Mary Mwari

Prosecution Case

2. Caroline Gakii stated that on October 14, 2020, his father (Accused) and mother Mary Mwari (Mwari) as usual left home in search of traditional liquor but they did not return for the night. It was her evidence that Accused came back alone the following morning at about 05.00 am and he slept. At about 06.30 am, one Sophia informed the witness that her mother was lying on the road. She rushed there to find her mother lying who asked for pain killers which she was given. That she was later taken to hospital and was treated as an outpatient and she subsequently died at home. John Ntongai upon finding Mwari lying on the road on October 15, 2020 called her brother John Gichunku who together with his sister escorted Mwari to hospital. The witness later got information that Mwari had died. John Gichunku stated that when he found her sister Mwari lying on the road, she was in pain and her body was swollen. She escorted her to Mulika Police Station where she reported to have been assaulted by her husband. She later succumbed to the injuries.
3. An autopsy conducted on the body of the deceased by Dr Kaberia on October 22, 2020 that Mwari had suffered multiple bruises, lacerations and abrasions on the legs, the left lung had collapsed, the right



lung was bleeding, and there was subgaleal hemorrhage (accumulation of blood that forms between the skull and the skin on the scalp) on left temporal (left side of head) and right occipital area (back right side of head) and had died of severe head injury secondary to head trauma as shown by the postmortem tendered in evidence as PEXH. 1.

4. The investigating officer stated that on October 15, 2020 before Mwari was taken to hospital, she was taken to Mulika Police Station where she reported that she had been assaulted by her husband one Murerwa. When she succumbed to the injuries, Accused who is her husband was arrested and charged.

Defence case

5. Accused conceded that he went to drink alcohol with his wife (Mwari) on the night of October 14, 2020. That they got drunk and on the way home, Mwari said she wanted to go to her parents' home and they parted ways. Mwari was later to be found lying on the road injures and she later succumbed to the injuries.

Analysis And Determination

6. 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. It requires 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. 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. The issue for determination is whether the prosecution has proved their case beyond reasonable doubt. In *Anthony Ndegwa Ngari vs Republic [2014] eKLR*, the Court of Appeal stated the three elements which the prosecution must prove beyond reasonable doubt in order to secure a conviction being: -

- (a) The death of the deceased and the cause of that death;
- (b) That the accused committed the unlawful act which caused the death of the deceased and
- (c) That the Accused had the malice aforethought.

a. The death of the deceased

8. There is no dispute that Mary Mwari suffered multiple bruises, lacerations and abrasions on the legs, the left lung had collapsed, the right lung was bleeding, and there was subgaleal hemorrhage (accumulation of blood that forms between the skull and the skin on the scalp) on left temporal (left side of head) and right occipital area (back right side of head) and had died of severe head injury secondary to head trauma as shown by the postmortem tendered in evidence as PEXH. 1.

(b) Proof that accused persons committed the unlawful act which caused the death of the deceased

9. No one saw Accused assault his wife. The issue in question is whether the report she made to police implicating Accused is sufficient to sustain a conviction.

10. Under the provisions of Section 33 of the *Evidence Act*, statements, written or oral of admissible facts made by a person who is dead or who cannot be found or who has become incapable of giving evidence or whose attendance cannot be procured without an amount of delay or expense which in the



circumstance of the case appears to the court unreasonable are themselves admissible in the following cases–

- a. When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question and such statements are admissible whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question; (Emphasis added)
11. The germane element of the law as stated hereinabove is that the statement must relate to the death of the person making the statement and not of any other person. (See *Republic v Yiende [1990] eKLR*).
 12. In this case, it is apparent that before her death, Mwari implicated Accused as the person that inflicted the injuries from which she died.
 13. The Court of Appeal in the case of *Musili v Republic [1991] eKLR* considered the circumstances under which a dying declaration becomes acceptable and held as follows:
 1. The law in Kenya relating to acceptance of a dying declaration as evidence is clear that whilst corroboration of a statement as to the cause of death made by the deceased before his death is desirable, it is not always necessary in order to support a conviction.
 2. Although there is no rule of law that to support a conviction there must be corroboration of a dying declaration, it is generally unsafe to base a conviction solely on an uncorroborated dying declaration.
 3. The learned judge in his summing up had given correct directions with regard to the cautious manner in which the dying declaration was to be approached.
 4. There was strong corroboration in the suspicious circumstances in which the appellant, armed with a bow and arrows was seen during the two material occasions. This court concurred with the High Court's finding that the appellant was guilty of murder.
 14. I have warned myself of the dangers of relying only on a dying declaration but after considering that Accused was the last person who was with the deceased alive find that the circumstances in this case are corroborative of the dying declaration that it was Accused that assaulted his wife causing her fatal injuries.
 - c) Malice aforethought
 15. The offence of murder is complete when, 'malice aforethought' is established if, pursuant to section 206 of the Penal Code evidence proves 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.'

16. In the case of *Republic v Tubere S/O Ochen [1945] 12 EACA 63* the court held that:

' An inference of malice aforethought can be established by considering the nature of the weapon used, the part of the body targeted, the manner in which the weapon was used and the conduct of the accused before, during and after the attack'

17. That the most severe injuries inflicted on Mwari were concentrated on the head can only mean that they were intended to cause her 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 Mwari.

18. A further display of Accused's malice is to be drawn from the fact that after assaulting Mwari, he proceeded home and left her lying on the road, cold injured and in pain instead of seeking medical attention for her.

19. From the foregoing, I find that the prosecution has proved the charge of murder against Accused and he is found GUILTY and convicted accordingly.

DELIVERED AT MERU THIS 30th DAY OF March 2023



WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistant - Kinoti

Accused - Present

For the Accused - Mr. Thangichia Advocate

For the State - Ms. Rita (PPC)

