



**Director of Public Prosecutions v Mutai (Criminal Case 45 of 2020)
[2023] KEHC 2862 (KLR) (30 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2862 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE 45 OF 2020
TW CHERERE, J
MARCH 30, 2023**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTIONS PROSECUTOR

AND

STANLEY MUTAI ACCUSED

JUDGMENT

1. Stanley Mutai (Accused) is charged with Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#). The particulars of the charge are that:

On May 3, 2018 in Mitunguu division in Imenti South Sub-County within Meru county murdered Francis Gitonga

Prosecution case

2. On May 3, 2018 at about 02,00 pm, the motor vehicle Francis Gitonga (Gitonga) and others were travelling in overheated and Gitonga alighted to go and look for water. Gitonga entered a gate into a fenced compound and when he returned fell down outside the vehicle and it was then that those that were with him noticed that he had been injured.
3. Whereas both Patrick Magaju and Irene Karimi who were with Gitonga did not see who stabbed Gitonga, Irene Kawira stated that she suspected Gitonga was stabbed by Peterson who was nearby and was armed with a knife.
4. A postmortem dated May 9, 2018 which was tendered in evidence as PEXH. 1 reveals that Gitonga died of hypovolemic shock due to massive hemorrhage after severance of femoral artery by a stab wound.



Defence Case

5. In his sworn defence, Accused denied the offence. He stated he had gone to drink alcohol with Gitonga and one Peter. That Gitonga and Peter quarreled and Peter dragged Peter outside the bar. That Gitonga attempted to hit Peter and when Accused attempted to stop him, Gitonga hit him on the head injuring him and causing him to lose consciousness. He tendered a P3 form in support of his claim that deceased had injured him. He did not know who inflicted the injuries that caused Gitonga's death.

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. 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.
7. 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.”
8. 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
9. The postmortem form PEXH. 1 reveals that Gitonga died of hypo anemic shock due to massive hemorrhage after severance of femoral artery by a stab wound.
 - b. Proof that accused person committed the unlawful act which caused the death of the deceased
10. The prosecution witnesses stated that they saw Accused hit Gitonga on the head. The postmortem revealed that Gitonga did not have an injury on the head and had been stabbed on the thigh. Accused denied stabbing Gitonga PW2 though she did not witness the stabbing incident stated that she suspected that one Peterson who was armed with a knife had stabbed Gitonga. This was buttressed by Accused who stated that Gitonga and Peter had quarreled on the material date.
11. The degree of proof in criminal cases was properly established in the classicus English case of *Woolmington v DPP* 1935 A C 462. Similarly, in *Bakare v State* 1985 2NWLR, Lord Oputa of the Supreme Court of Nigeria adopted the principle as follows at page 465: -
 - “Proof beyond reasonable doubt stems out of the compelling presumption of innocence inherent in our adversary system of criminal justice. To displace the presumption, the evidence of the prosecution must prove beyond reasonable doubt that the person accused is guilty of the offence charged. Absolute certainty is impossible in any human adventure, including the administration of criminal justice. Proof beyond reasonable doubt means just what it says it does not admit of plausible possibilities but does admit of a high degree of cogency consistent with an equally high degree of probability”. (Emphasis added).
12. With those parameters in mind, I have considered whether the evidence by the prosecution witnesses proved beyond doubt that Accused caused the death of Gitonga.



13. Evidence on record discloses that the only person that had a knife at the scene was one Peter/Peterson and was the person that likely stabbed Gitonga after they quarreled.

Malice aforethought

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

Disposition

15. 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 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 (PC 1)

