



**Director of Public Prosecution v Muriuki (Criminal Case
E030 of 2022) [2023] KEHC 2944 (KLR) (30 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2944 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE E030 OF 2022
TW CHERERE, J
MARCH 30, 2023**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTION PROSECUTOR

AND

GEREVASIO KABERIA MURIUKI ACCUSED

JUDGMENT

1. Gerevasio Kaberia Muriuki (accused) is charged with murder contrary to section 203 as read with section 204 of the [Penal Code](#).

On January 20, 2022 at Muki village, Kiguchwa location in Tigania Central sub-county within Meru county jointly with others before the court murdered Edwin Gikundi.

Prosecution Case

2. HK aged 12 years stated that accused was their neighbor. She recalled that on January 20, 2022 at about 06.30am on her way to school, she heard screams in a bush and when she approached found accused and one Raphael assaulting her uncle EG (G). She stated she informed her grandmother JT. JT, stated she received PW1's report at 04.00 am and did not go to the scene but informed her sons Mutembei and Mwiti and later learnt that her son G had died. Dickson Muthike Michubu stated that on the material date at about 04.00 am, one Raphael called him and together they went where he had heard screams outside a pastor's home where they found accused and others assaulting G. He tried to stop them but when they did not heed to his pleas, he went away and the following day reported the matter to one Kimathi. Sabina Karegi did not know how G was killed. GG stated his niece PW1 informed them that he had seen accused and another assaulting G. He stated he went to the scene and found his mother JT, who is PW1's grandmother at the scene and noticed that G was barely alive. He also stated that he had spent the night with G and did not know when he left the house.



3. The investigating officer found deceased's body lying near the home of one Pastor Kanyiri who informed him that deceased was killed for stealing miraa from the farm of one Martin Kobia and that both Kanyiri and Kobia declined to record statements. He tendered deceased's postmortem form Pexh1 which shows he died of severe head injury from blunt trauma with hypovolemic shock from severe bleeding.

Defence Case

4. In his sworn defence, accused denied the offence. He stated that on the night of January 20, 2022 when he was at a tea buying centre, he got information that a miraa thief had been killed. According to him, he was framed by Dickson Muthike Michubu from whose father he had leased land against the wishes of Dickson. Accused's first witness Stephen Michubu who is the father of the deceased heard screams at about 01.00 am and when he went to the scene found a crowd of about 50 people with deceased lying dead and he heard that deceased was killed for stealing miraa. He stated that accused was implicated by his son Dickson Muthike Michubu who was unhappy that he had leased land to accused. His second witness was also attracted to the scene at about 01.00 am and he found deceased lying dead surrounded by a crowd that accused him of stealing miraa.

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. 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.”
6. The issue for determination is whether the prosecution has proved their case beyond reasonable doubt. In [Anthony Ndegwa Ngari v 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
7. There is no dispute that EG died. deceased's postmortem form Pexh1 The postmortem marked as Pexh 1 reveals he died of injury from blunt trauma with hypovolemic shock from severe bleeding.
 - b. Proof that accused persons committed the unlawful act which caused the death of the deceased
8. Reasonable doubt is not mere possible doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence leaves the mind of the court in that condition that it cannot say it feels an abiding conviction to a moral certainty of the truth of the charge.



9. 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)

10. PW1 HK stated the incident happened about 06.30 am but evidence has been led by both prosecution and defence witnesses that deceased died around 01.00 am to 04.00am. PW1’s evidence that he found accused and another beating the deceased at about 06.30 am cannot therefore be truthful.
11. Dickson Muthike Michubu stated he found accused assaulting deceased at about 01.00 am and that his mother JT was at the scene. His evidence is however questionable for the reason that JT stated she did not go to the scene of murder and did not know about the incident until 04.00 am which was three hours later.
12. Evidence by the investigating officer that deceased was killed by a mob for stealing miraa was corroborated by the two witnesses that were called by the accused. Accused stated he was not at the scene of crime and was a tea buying centre. His *alibi* raises a reasonable doubt especially considering that the witnesses who alleged he was at the scene have given contradictory evidence concerning the time the offence was committed making their evidence doubtful.
13. Deceased’s father who was called as a witness by the accused corroborated accused’s defence that his family particularly Dickson Michubu had a grudge against accused because he had leased land from him against their wishes.
14. From the foregoing, I find that the prosecution case that accused killed the deceased was not proved beyond reasonable doubt.
15. Mativo, J (as he then was) in *Elizabeth Waitiigeni Gatimu v Republic* [2015] eKLR stated as follows:
- “The accused is entitled to the benefit of doubt not a matter of grace and concession, but as a matter of right. An accused person is the most favourite child of the law and every benefit of doubt goes to him”

Malice aforethought

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

Disposition

17. 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

DELIVERED AT MERU THIS 30th DAY OF March 2023





WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistant - Kinoti

Accused - Present

For the Accused - Mr. Ngentu Advocate

For the State - Ms. Rita (PC 1)

Page 3 of 6

