



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Njagi (Criminal Case E029 of 2021)  
[2023] KEHC 25623 (KLR) (22 November 2023) (Judgment)**

Neutral citation: [2023] KEHC 25623 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
CRIMINAL CASE E029 OF 2021  
LM NJUGUNA, J  
NOVEMBER 22, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**LUCAS NJUE NJAGI ..... ACCUSED**

**JUDGMENT**

1. The accused person was charged with the offence of murder contrary to Section 203 as read together with Section 204 of the Penal Code. The particulars of the offence are that on 09<sup>th</sup> November 2021 at Gichera sub-location, Kagaari South East Location in Embu East sub-county within Embu County, the accused murdered Lydia Muthoni Kiragu. On arraignment, he pleaded not guilty and a plea of not guilty was entered and the matter proceeded to full hearing.
2. PW1, Daniel Ndwiga was the area chief of Kagaari South East. He stated that on the day of the incident, he was on duty when he received a call from his assistant chief, one Mary Wahu, informing him that someone well known to her was alleged to have killed another person. That he left at once and went to the scene around Kamukia Bar where he found the accused having been accosted by an irate mob which was at the verge of lynching him. That he immediately dispersed the crowd and took the accused away then handed him over to the police. He stated that the immediate thing he did was to take the accused away from the crowd because he feared that, the crowd would kill him. That he did not see the body of the deceased when he got to the scene as he was preoccupied with removing the accused from the angry mob.
3. PW2, Monica Wanjiku was the owner of a club known as Soweto. She stated that at around 9AM, the deceased entered her establishment and asked for alcohol. That while she was indulging, the accused, whom she knew to be the husband of the deceased, walked in and started demanding for his money from the deceased. That an altercation ensued and she asked the accused to leave and the deceased remained. That the accused returned, armed with a knife and PW2 chased both of them away from her



- club and after about two hours, she heard that the deceased had been killed. She identified the knife as the one she had seen the accused person holding and the same was produced in evidence. She stated that she did not know who killed the deceased and that the knife was the one she saw the accused carrying in his trouser when he came to her club.
4. PW3, Ruth Wangari Kahi is an analyst at the Government Chemist Nairobi in the forensics laboratory. She stated that on 21<sup>st</sup> December 2021 she received 2 samples and a request for analysis from DCI Embu East. That the samples were a knife with a black handle in a khaki envelope and blood in a vacutainer and the request was to examine whether the blood on the knife matched the blood sample. She stated that from examination, the DNA profile generated from the blood stain on the knife matched the DNA profile of the blood sample from the deceased. The probability of random match 1 in 3.2 to the power of 25. She produced the report as evidence. On cross-examination, she stated that the findings were more specific to the deceased as compared to findings if a blood sample was drawn from a random person.
  5. PW4, Mercy Wahu is the assistant chief of Gichera sub-location. She stated that on the day of the incident, she was on duty when she received a phone call from a village elder informing her that the deceased had been murdered. That she asked the village elder to rush and take the deceased to hospital but upon arrival, he reported that the deceased was already dead. That she called the OCS who instructed her to go to the station where she was given police officers and a motor vehicle. That she also called PW1 and told him of the incident and that he should go to the scene to ensure that the suspect does not escape. She stated that while she was on the way to the scene with the police officers, they met PW1 with the suspect who was then arrested by the police. That the accused took them to his home and voluntarily showed them where he had hidden the knife at the gutter. She said that she did not see blood stains on the knife and that the accused told them that he had washed the knife after the incident.
  6. PW5, Dr. Rosemary Wangari Kamau of Embu Level 5 Hospital conducted postmortem on the body of the deceased. She produced the postmortem report which detailed that there was a penetrating wound on the left scapular region with smooth edges and massive hemothorax which was clotted and was about two liters. She formed the opinion that the cause of death was hypovolemic shock secondary to penetrating chest injury. On cross-examination, she said that she drew blood samples for purposes of a toxicology report, which is part of the usual process, but she did not follow up on the results as she had conclusively determined the cause of death.
  7. At the close of the prosecution's case, the court found that the accused had a case to answer and was placed on his defense. He gave unsworn evidence and did not call any witnesses.
  8. DW1, the accused person, stated that the deceased was his wife. That they had agreed to sell a goat and buy food which would last them until the harvesting season. That the goat was sold for Kshs. 5,000/= but he noticed that the money was missing from the house. That he went to the club where the deceased worked as a kitchen staff and he found her peeling potatoes while taking beer. That when he inquired about the money, the deceased answered him saying that she did not have young children to take care of and DW1 told her that her children were their stomachs. That he took her by both hands and she fell on a bench that had a knife and she was injured. That he took the knife and went home with it. That one hour after he had gotten home, one Jeremiah Nthiga told him that his wife had died and that he is being sought for by the authorities. That the chief and the assistant chief handed him over to the police and he gave them the knife. He was later charged with murder.
  9. It is now upon this court to determine whether the offence has been proved beyond reasonable doubt.
  10. Article 26 of *the Constitution* of Kenya provides that a person shall not be deprived of life, except to the extent authorized by *the Constitution* or written law. The accused person herein faces the charge



of murder contrary to Sections 203 and 204 of the [Penal Code](#). It is the duty of the prosecution to prove beyond reasonable doubt, that the accused murdered the deceased. Section 203 of the Penal Code provide the elements of the offence as follows:

“203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”

11. In the case of [Republic Vs W.O.O.](#) [2020] eKLR (Migori High Court Criminal Appeal No. 26 of 2017) the elements of murder were explained, being guided by the Court of Appeal in the case of *Anthony Ndegwa Ngari Vs Republic* [2014] eKLR, as follows:

“For the offence of murder to be proved, there are three elements which the prosecution must prove beyond reasonable doubt in order to secure a conviction. They are: (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.”

12. On the first element of death and cause of death, PW5 formed her professional opinion that the deceased died due to hypovolemic shock secondary to penetrating chest injury. She stated that there was a penetrating wound on the left scapular region and it had smooth edges. She also stated that there was left massive hemothorax which was clotted and was about two liters. This is sufficient proof of death and cause of death.
13. On the element of unlawful act which caused the death of the deceased, the prosecution is tasked with proving that the accused was linked to the death of the deceased. PW2 narrated that she witnessed an altercation between the deceased and the accused over a sum of money. She stated that it happened in her club at around 9.00 a.m. on the day of the incident. That the accused left but returned with a knife that had a black handle and she identified the exhibit in court as the knife. She stated that following the altercation, she chased the deceased and the accused from the club and later she was informed that the deceased had been killed. PW4 stated that she received information that the deceased had been killed and the accused was arrested as a suspect.
14. Both PW1 and PW4 stated that the accused voluntarily handed over the knife to them and the police at his house where he was hiding it in the gutter. PW3 produced DNA results confirming that the traces of blood found on the knife are a match to the sample collected from the deceased. All these pieces of evidence together point towards the accused as the perpetrator of the murder, although, none of the witnesses actually saw the accused stabbing the deceased with the knife.
15. The accused in his defense stated that he had gone to the place where the deceased was working and he had an exchange with the deceased. He took her by both hands before the deceased fell on a knife which injured her. That he took the knife and went home with it and that is how it was found in his house. I am not persuaded that this is sufficient explanation of the events that led to the death of the deceased, from the accused person's perspective. If indeed this was true, PW2 would have witnessed the same as she would have seen injuries, if any, on the deceased.
16. On the element of malice aforethought, a murder is only such if the perpetrator had the intent to kill the deceased. Such intent is to be established as intended by Section 203 of the [Penal Code](#). Malice aforethought is defined and well explained under Section 206 of the Penal Code as follows:

“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.”

17. Further, the court in *Republic Vs Njeru & 3 others* (Criminal Case 2 of 2019) [2023] KEHC 19141 (KLR) stated as follows:

“The Court of Appeal in *Bonaya Tutu Ipu & Another Vs Republic* [2015] eKLR stated as follows on the prove of malice aforethought; -“It is in rare circumstances that the intention to cause death is proved by direct evidence. More frequently, that intention is established by or inferred from the surrounding circumstances. In the persuasive decision of *Chesakit Vs Uganda*, CR. APP. NO. 95 OF 2004, the Court of Appeal of Uganda stated that in determining a charge of murder whether malice aforethought has been proved, the court must take into account factors such as the part of the body injured, the type of weapon used, if any, the type of injuries inflicted upon the deceased and the subsequent conduct of the accused person. Earlier in *Rex Vs Tubere s/o Ochen* [1945] 12 EACA 63, the former Court of Appeal for Eastern Africa stated thus on the issue: It (the court) has a duty to perform in considering the weapon used and the part of the body injured, in arriving at a conclusion as to whether malice aforethought has been established, and it will be obvious that ordinarily an inference of malice will flow more readily from the case, say, of a spear or knife than from the use of a stick.....”

18. According to PW2, the accused had an altercation with the deceased and then he left and returned with a knife that had a black handle. PW5 testified that the deceased had a penetrating wound on the left scapula. According to Section 206 of the Penal Code, proof of any one or more of the four circumstances listed therein is sufficient to prove malice aforethought. The testimony by PW2 proves that the accused had an intention to cause the death of or to do grievous harm to the deceased who was later found dead. He armed himself with a knife and used it to inflict a fatal injury on the deceased.

19. In conclusion and having considered the evidence on record and the relevant caselaw, it is my finding that the prosecution has proved its case against the accused beyond reasonable doubt. I find him guilty as charged and convict him accordingly.

20. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 22<sup>ND</sup> DAY OF NOVEMBER, 2023.**

**L. NJUGUNA**

**JUDGE**

.....for the State

.....for the Accused Person

