



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
(CORAM: CHERERE-J_
CRIMINAL CASE NO. E001 OF 2021

BETWEEN
REPUBLIC PROSECUTOR
AND
JOHN MUTHEE NDEGWA.....ACCUSED

JUDGMENT

1. **John Muthee Ndegwa (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 18th December, 2020 at Ndurumuru village, Kisima Location in Buuri Sub-County within Meru County murdered Lydia Wanjiru

PROSECUTION CASE

2. The prosecution case as narrated by **PW1 Joseph Ndegwa**, Accused's father is that on 18.12.2020, well knowing that his son was away, he without prompting went to his son's house and surprisingly found his wife **Lydia Wanjiru** lying dead on her bed subsequent to which he reported the matter to **PW5 PC Andrew Lokelima** to whom he reported that the deceased was killed by her son who was her husband. **PW2 Esther Njoki Ndegwa**, Accused's sister arrived home on the material morning to find her sister in law **Lydia Wanjiru** lying dead on her bed. As confirmed by her evidence before the court, the couple's daughter **M G** aged 14 years informed the police as was recorded in her statement with the police stated that the previous night before the murder, Accused was at home and there appeared to have been a quarrel because her mother had stated that she wanted to leave home and Accused had told her that it was late. It was further her evidence that Accused had spent the night at home and she had on the morning of 18th December, 2020 heard her mother make a strange sound from the bedroom after which Accused left home only for her mother to be discovered dead the same morning. On the morning after the murder, Accused called **PW6 PC Mark Bundi** at about 06.00 am and reported that there was a dead body in his house. On 20th December, 2020, Accused called again and said he was in Isiolo and was willing to surrender and true to his word he surrendered to **PW5 PC Andrew Lokelima** on 21st December, 2020 and was subsequently charged.

3. An autopsy on **Lydia Wanjiru's** body was conducted on 28th December, 2020 and the Postmortem form tendered by **PW4 Dr. Dennis Mugambi** as **PEXH. 1** reveals that deceased suffered the following injuries:

1. **Multiple skull fractures on right temporal region with brain tissue oozing from open wound**

2. **Intracerebral hematoma with traumatic brain injury**

4. An opinion was formed that the deceased died of severe traumatic brain injury with intracerebral hemorrhage caused by blunt trauma to the head.

DEFENCE CASE

4. In his sworn statement, Accused stated that on the morning of 19th December, 2020, his father **PW1** informed him that his wife had been murdered. That he relayed the information to **PW6 PC Mark Bundi** and on 21st December, 2020 surrendered to on **PW5 PC Andrew**

Lokelima and was subsequently charged.

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. 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. 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 death and that he was actuated by malice.

a. The death of the deceased

7. The postmortem form **PEXH.1** reveals that the deceased that deceased suffered deceased suffered the multiple skull fractures on right temporal region with brain tissue oozing from open wound and intracerebral hematoma with traumatic brain injury and died of severe traumatic brain injury with intracerebral hemorrhage caused by blunt trauma to the head.

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

8. As stated hereinabove, the couple's daughter **M G** aged 14 years in her first report to the police immediately after the murder was discovered was that Accused was at home on the date and time of the murder and left early in the morning before deceased's body was discovered.

9. PW1 who was the first to discover the body did not state that he reported the matter to his Accused. What I found most surprising was that PW1 on the morning of the murder, without prompting went to his son's house and shockingly found Accused wife **Lydia Wanjiru** lying dead on her bed. He did not explain what prompted him to go to his son's house and the answer lies in the fact that he knew that deceased was dead having received this information from Accused himself. That Accused knew his wife was dead was confirmed by PW6 to whom Accused reported the matter on the morning of the murder.

10. That the couple's daughter heard a strange voice in her parent's bedroom before Accused left home leaves the court in no doubt that he committed the murder and absconded from the scene.

11. This evidence was never meaningfully challenged on cross-examination. The Court of Appeal in **Terekali & Another vs. Republic [1952] EA 259** pronounced itself that: -

“Evidence of first report by the Complainant to a person in authority is important as it often provides a good test by which the truth and accuracy of subsequent statement may be gauged and provides a safeguard against later embellishment or made up case. Truth will always come out in a first statement taken from a witness at a time when recollection is very fresh and there has been no time for consultation with others...”

12. I am convinced that the recorded statement was truthful. Further the accused when placed on the defence together with his family none of them can give a complete chronological timeline of events. When did he travel to go look for work? Where did he travel to? PW1 never averred that at any time he informed the accused of his wife's death. PW4 the doctor testified the deceased died from severe brain injury with brain hemorrhage due to blunt trauma to the head, someone must have inflicted the said injury upon the deceased.

13. From the evidence on record, there is no doubt that Accused and his father obviously intended to conceal the cause of the deceased's death and to divert the attention that Accused was involved. This can be deduced clearly from the evidence of the two alleging that Accused was not at home at the material time and on their apparent attempt to dissuade the couple's daughter to change her testimony and present a different case other than the one presented when she first recorded her statement with the police.

14. From the foregoing, the circumstances point to no other hypothesis other than that that Accused. and no other person, committed the unlawful act which caused the death of the deceased.

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. Having found that the prosecution has proved *actus reus*, the issue for determination is whether malice aforethought can be inferred from the circumstances of this case. Evidence by the Accused that he was provoked by Isaac has not been controverted.

17. That the injuries inflicted on the deceased were so severe and 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 deceased. I am therefore satisfied that malice aforethought has been established in terms of Section 206 (a) and (b) of the Penal Code.

18. Consequently, I have come to the conclusion that the state has proven its case beyond reasonable doubt. Accused is found **GUILTY** of the offence of murder and he is accordingly convicted.

DELIVERED AT MERU THIS 31ST DAY OF MARCH,2022

WAMAE. T. W. CHERERE

JUDGE

Court Assistant - Kinoti

Accused - Present

For the Accused - Mr. Muchomba Advocate

For the State - Ms. Mwaniki