



**Republic v Kaaria (Criminal Case 100 of 2017)
[2022] KEHC 359 (KLR) (28 April 2022) (Judgment)**

Neutral citation: [2022] KEHC 359 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE 100 OF 2017
TW CHERERE, J
APRIL 28, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

BONFACE MWITI KAARIA ACCUSED

JUDGMENT

1. Bonface Mwiti Kaaria (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 06.12.2017 at Taai village, Kathera Location, Imenti South Sub-County within Meru County murdered Stanley Kaaria

Background

2. Accused is son to the deceased. Both used to take alcohol. On the material date, Accused was called by his father to take his car to Nkubu and he found his father at Farmers Bar where both partook alcohol and according to Accused and his step mother Julia Kinanu who testified as PW1, both got really drunk. Accused handed over the car keys to his father and proceeded home by public means. Upon his arrival at home, Accused found his father had already arrived and according to Accused and PW1, a quarrel ensued with deceased asking why Accused he had declined to drive him home. According to PW1, deceased pushed Accused out of the house. According to Accused, his father followed him outside armed with a stick and a fight ensued as a result of which he wrestled the stick from his father and hit him once on the head causing him injuries from which he died while undergoing treatment on 19th December, 2017. As a result, Accused was arrested and charged.



Analysis and Determination

3. I have considered the evidence on record. For Prosecution to secure a conviction on the charge of murder, it has to prove three ingredients the death, that Accused persons committed the murder and that they were actuated by malice. (See *Anthony Ndegwa Ngari v Republic* [2014] eKLR).

(a) The death of the deceased

4. That Stanley Kaaria died was confirmed by the evidence contained in the postmortem form tendered as PEXH. 1 which reveals that he died of massive subdural hematoma secondary to blunt force trauma.

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

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. Accused conceded that he is the one that hit his father causing him injuries from which he later died.

(c) Malice aforethought

7. 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.”

8. 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 fighting back the deceased who had attempted to hit him with a stick has not been controverted.

9. In *Nzuki -V- Republic* (1993) KLR 171, the Court in substituting Nzuki’s charge of murder with manslaughter observed:

“There was a complete absence of motive and there was absolutely nothing on the record from which it can be implied that the appellant had any one of the intentions outlined for



malice aforethought when he unlawfully assaulted the deceased with the fatal consequences. Other than observing that the appellant viciously stabbed the deceased and in so doing intended to kill or cause him grievous harm, the trial court did not direct itself that the onus of proof of that necessary intent was throughout on the prosecution and the same had been discharged to its satisfaction in view of the circumstances under which the offence was committed. Having not done so, we are uncertain whether malice aforethought was proved against the appellant beyond any reasonable doubt. In the absence of proof of malice aforethought to the required standard, the appellant's conviction for the offence of murder is unsustainable. His killing of the deceased amounted only to manslaughter."

.....Their evidence did not prove mens rea and did not establish malice aforethought. We find that mens rea for murder was not adequately established and proved to the required standard and we agree with the state that the charge of murder should be reduced to manslaughter. The upshot is that we quash the conviction for murder and set aside the death sentence and substitute in its place a conviction for manslaughter".

10. From the evidence on record, it can safely be inferred that the act of hitting the deceased was accidental and without any malice aforethought on the part of the Accused. In other words, it was likely that the Accused did not intend to kill his father.
11. In the end, I find that the evidence as adduced by the Prosecution established beyond reasonable doubt the act of unlawful killing of the deceased by the Accused person herein without malice aforethought.
12. Section 179 of the *Criminal Procedure Code* stipulates that:
 - (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and the combination is proved but the remaining particulars are not proved, he may be convicted of the minor offence although he was not charged with it.
 - (2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he was not charged with it."
13. From the foregoing analysis, I find Accused guilty of a lesser charge of manslaughter contrary to Section 202 (1) of the Penal Code as read with Section 205 of the Penal Code and he is convicted accordingly.

DELIVERED AT MERU THIS 28TH DAY OF APRIL 2022

WAMAE. T. W. CHERERE

JUDGE

APPEARANCES

Court Assistant - Kinoti

Accused - Present

For the Accused - Mrs. Ntarangwi Advocate

For the State - Ms. Mwaniki

