



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Republic v Sakwa (Criminal Case 27 of 2014)
[2022] KEHC 15490 (KLR) (26 April 2022) (Judgment)**

Neutral citation: [2022] KEHC 15490 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE 27 OF 2014**

SM GITHINJI, J

APRIL 26, 2022

BETWEEN

REPUBLIC PROSECUTOR

AND

PATRICK LUMUMBA SAKWA ACCUSED

JUDGMENT

1. The accused was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*, cap 63, Laws of Kenya. The particulars of the offence are that on March 6, 2014 at Bandari Village, Mwamba Sub-location, Lugari District within Kakamega County, the accused murdered Janet Musasia.
2. The prosecution called a total of 7 witnesses in support of its case while the defence called the accused only.

Prosecution Case

3. PW1 Judith Wasumba Yumba told the Court that on March 6, 2014 she was at home preparing lunch in the company of Pastor Sammy. That she welcomed the deceased who was in the company of another female colleague, served them lunch and left shortly thereafter.
4. She told the Court that 20 minutes later she heard screams from the main Eldoret-Webuye road about 400 metres from her home. That they rushed there and found people screaming saying “madam ameumizwa” and her blouse was blood stained.
5. She informed the Court that the lady colleague who was in the company of the deceased directed them to a house belonging to the accused where the deceased was. Upon reaching there, they found the deceased in pain and blood was oozing from her head and left arm. Further that the accused was standing there holding a rungu and a sword and that there were some arrows and a bow on the ground.



6. She stated that the accused was violent and wanted to pick the arrows to attack the crowd but he was arrested by the crowd. The deceased was then taken to the hospital.
7. She told the Court that she knew the accused as her neighbor. Their shambas borders each other and the deceased was in charge of the A.P camp and had been investigating a shamba complaint against the accused.
8. PW2 Petronilla Nangila Musasia the mother to the deceased testified that on March 6, 2014 she was on duty at her pharmacy in Chavakali when she received a call that the deceased had been injured and taken to MTRH. That the following morning she went to the hospital and found the deceased in I.C.U where she stayed with the deceased until 9.00 pm.
9. She told the Court that the following day when she returned to the hospital, she was informed that the deceased died during the night and her body was transferred to the mortuary.
10. PW3 Geoffrey Araka Sakwa a brother to the accused informed the Court that on March 6, 2014 at around 1.00 pm to 2.00 pm, he was at home when he heard screams from the main road about 200 metres from where he was and saw a group of people at the place.
11. That he rushed there and when he was about to get into the home of the accused, he met a woman crying who told him that the deceased had been attacked and fallen.
12. He told the Court that he looked into the accused's compound and saw a woman who was struggling to rise and fell every time she made an attempt. That she had injuries on the shoulder and head.
13. He stated that he questioned the accused why he had injured the deceased and he said that the deceased and her colleague had attacked him and he fought in self-defense.
14. He further stated that the deceased was taken to the hospital while the accused was taken to Turbo police station.
15. He further stated that he had seen the accused with a club, bow and arrows.
16. On cross examination, he stated that he knew that the accused and PW1 had a land dispute but the same had been resolved before March 6, 2014.
17. PW4 Walter Nalianya a pathologist at MTRH informed the Court that on 13/3/2014 he did a post-mortem on the body of Janet Musasia and his findings were as follows;
 - a. A sutured wound on the occipital side of the head about 8 cm long and another one on the same region about 6 cm long.
 - b. Multiple bruises on the right side of the eye
 - c. Tiny bruises on the posterior neck
 - d. Abrasions on the abdomen
 - e. Skull fracture on the back side measuring 5x8 cm
 - f. Generalized subdural hematoma

His opinion is that the cause of death was severe head injury.
18. PW5 Eunice Chebet a Clinical officer informed the Court that on March 6, 2014 at about 1;00pm she received two patients one was unconscious and bleeding profusely from the head. The conscious one informed her that they had been attacked by someone known to them.



19. She testified that she examined the unconscious patient and she had a deep cut on the head and a depression showing that a blunt object was used. She stitched the wound and the patient was referred to MTRH where she was admitted in the I.C.U and later died while undergoing treatment. Further that the other patient had minor injuries which were treated and she was discharged.
20. PW6 No. 67XXX Cpl Dalmus Owour, the investigating officer, told the Court that on March 6, 2014 he was on duty at Turbo Police station at around 2.00pm when he received the accused who had been brought by members of the public.
21. He told the Court that a report was made that the accused had seriously assaulted two ladies who were passing through his home and that one of the ladies was an Administration Police Sergeant.
22. He informed the Court that he rearrested the accused and alongside his two other colleagues, they went to the scene of crime where he interviewed the people he found at the place.
23. He stated that outside the accused house, he found two clubs, bow and arrows.
24. He added that he drew a sketch plan of how the scene was though the scene had been interfered with by the presence of many people.
25. He told the Court that he then went to Turbo Sub-County hospital where one Edith Otieno, who was in the company of deceased, was being treated and interviewed her.
He as well testified that the deceased had succumbed to the injuries.
26. He stated that upon questioning the accused, the accused told him that he had attacked the two ladies thinking that they had gone to evict him from the land since there was a boundary dispute between him and PW1.
27. He told the Court that from his investigations, the accused had been previously arrested and taken to Mwamba A.Ps post where the deceased was in charge. The arrest was due to the boundary issue and the accused was warned and released. That in his opinion, this was the motive of the attack.
28. PW7 No. 66XXX Cpl Simon Likonyi testified that on March 13, 2014 at about 2.00pm he was at the Crime office in Eldoret when PW6 asked for his company to MTRH Morgue. He went and photographed a body that post mortem had been conducted.
He took 4 photographs which all show physical injuries.

Defence Case

29. At the close of the prosecution's case, this Court ruled that the accused had a case to answer and accordingly was placed on his defence. The accused stated that on March 6, 2014, he went to Kipkaren to sell chicken. That at around 3.00pm, he went back home where he was arrested by four people among them his brother.
30. He stated that he asked for the reason for arrest and was told that they suspected he had injured two ladies; Janet Musasia and Edith Atieno.
31. He told the Court that he was then taken to the police station where he was received by PW6, questioned and placed in cells. That he was later charged with assault of the two ladies.
32. He further stated that around 17th or March 18, 2014 he was unwell and requested for treatment. He was taken to MTRH hospital where a mental assessment was conducted but he was not treated.
33. He denied attacking the deceased and stated that her body had been found in his compound.



34. On Cross examination, he stated that PW3 is his brother and that they had a quarrel as his cows were feeding on his crops. He added that PW1 was his neighbor, they had a boundary dispute which was resolved and the A. Ps told him not to interfere with the boundary.

Analysis and Determination

35. For Prosecution to secure a conviction on the charge of murder, it has to prove three ingredients against an Accused person. In *Anthony Ndegwa Ngari v Republic* [2014] eKLR, the elements of the offence of murder were listed as follows: -
- (a) the death of the deceased occurred;
 - (b) that the accused committed the unlawful act which caused the death of the deceased; and
 - (c) that the accused had malice aforethought.

The Death of the Accused.

36. The death of the accused was proved by the prosecution witnesses who saw the body of the deceased and the injuries she had sustained. Further from the post mortem report Ex. 5 it is conclusive that the deceased died of severe head injury.
37. Proof that the accused committed the unlawful act which caused the death of the deceased.
38. Pw1 and Pw3 made reference to clubs and a bow and arrows that were in possession of the accused. The weapons are consistent with ones likely to cause the injuries sustained by the deceased. The accused in his defence conceded that the body of the deceased was found under a mango tree in his compound. This is a vivid description consistent with the crime scene which in my view shows he was present to be able to give such an accurate account. I do find that the accused did commit the unlawful act which caused the death of the deceased, which constitutes the “*actus reus*”. The available circumstantial evidence points irresistibly to his guilt.

Proof that the Accused had Malice Aforethought

39. It is the duty of this Court to determine whether the accused had malice aforethought to inflict the injuries that resulted to the death of the deceased. There is of course no requirement in the Penal Code that one must have motive for murder which is the unlawful killing of another with malice aforethought under Section 203 of the *Penal Code*. The ingredients of murder were explained in the case of *Roba Galma Wario vs Republic* [2015] eKLR where the Court held that;

“For the conviction of murder to be sustained, it is imperative to prove that the death of the deceased was caused by the appellant; and that he had the required malice aforethought. Without malice aforethought, the appellant would be guilty of manslaughter, as it would mean the death of the deceased during the brawl was not intentional.”

40. Malice aforethought was defined in the following cases;

Nzuki Vs Republic [1993] KLR 171 where the Court of Appeal held that before an act can be murder, it must be aimed at someone and in addition it must be an act committed with the following intentions, the test of which is always subjective to the actual accused.

- Intention to cause death- Intention to cause grievous bodily harm-Where accused knows that there is a risk that death or grievous bodily harm will ensue from his acts and commits them without lawful excuse.



41. In the case of *Daniel Muthee vs Republic* Criminal Appeal No. 218 of 2005 (UR) cited in the case of *Republic vs Lawrence Mukaria & Another* [2014] eKLR, Bosire, O’kubasu and Onyango Otieno JJA., while considering what constitutes malice aforethought observed as follows:

“When the appellant set upon the deceased and cut her with a panga several times and then proceeded to cut the young Allan in similar manner, he must have known that the act of cutting the deceased persons on the head with a sharp instrument would cause death or grievous harm to the victims. We are therefore satisfied that malice aforethought was established in terms of Section 206(b) of the *Penal Code*.”

42. Pw1 testified that there was a boundary dispute between her and the accused that was resolved by the A.P. Pw3, the brother to the accused testified to the effect that there indeed was a boundary dispute between the accused and Pw1. Pw6 the I.O gave evidence that his investigations established there was a boundary dispute between Pw1 and the accused. That as a result of the dispute, the accused had been arrested by the A. P’s from Mwamba station where the deceased was in charge. The accused did concede the said dispute and arrest at the A. P’s camp where the deceased was in charge. This to me leaves no iota of doubt that motive and malice aforethought has overwhelmingly been established in terms of Section 206 (b) of the *Penal Code* as the accused had motive to attack and kill the deceased. The deceased died of severe head injury which demonstrates intention by the accused to cause grievous bodily harm if not death.

43. The upshot is that the prosecution has proven its case beyond reasonable doubt. I find the accused Guilty of murder and is hereby convicted accordingly.

JUDGMENT FOR ELDORET READ AND SIGNED AT MALINDI IN THE OPEN COURT TO PARTIES WHO APPEARS VIRTUALLY, WHO ARE; - MR MIYIENDA FOR THE ACCUSED PERSON AND MR MWANGI HOLDING BRIEF FOR M/S LIMO FOR THE STATE, THIS 26TH DAY OF APRIL, 2022.

.....

S.M. GITHINJI

JUDGE

Mr Mwangi ;- He has no previous record. He is a first offender.

Mr Mijienda ;-I pray that the Court considers that accused is a Senior Citizen aged 53 years. He has a family he left when he was placed in remand. He has been in remand from March, 2014, which amounts to 8 years and one month. We pray the Court considers the period as sufficient for the committed offence. I so pray.

Court ;-I have weighed the circumstances under which the offence was committed. That the convict is a first offender. I have also considered the period spent in remand which is lengthy. He is a person who may benefit from a non-custodial sentence. His report will be prepared by a probation officer in Eldoret. We mention the matter on May 26, 2022. The Deputy Registrar to follow up on the report.

.....

S.M. GITHINJI

JUDGE

