



REPUBLIC OF KENYA



**KENYA LAW**

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**Republic v Muthoka (Criminal Case 8 of 2018)  
[2022] KEHC 10577 (KLR) (1 April 2022) (Judgment)**

Neutral citation: [2022] KEHC 10577 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CRIMINAL CASE 8 OF 2018**

**A. ONG'INJO, J**

**APRIL 1, 2022**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JOHN KIILU MUTHOKA ..... ACCUSED**

**JUDGMENT**

1. The accused John Kiilu Muthoka is charged with the offence of murder contrary to Section 203 as read with Section 204 of the *penal code*.
2. Particulars are that John Kiilu on the 2<sup>nd</sup> day of February 2018 at Tudor area on Mombasa County murdered William Bill Akatu.
3. PW 1 Dr Fatma Ahmed produced postmortem Report in respect of the body of William Bill Akatu. Post mortem was done by Juti on February 5, 2018. Dr Juti formed the opinion that death was caused by hemorrhagic shock secondary to penetrating chest stab wound.
4. PW 2 testified that the accused and the wife had a dispute and as Chairman and Balozi of Kaa Chonjo, he accompanied Riziki another Balozi to intervene and a resolve the dispute.
5. The wife of accused had complained that the accused had threatened to kill her because she had not sired a child for him. The wife of the accused also complained that accused didn't want to work but used to take her money.
6. When they went to the house they found accused had packed things and was seated on a bed without a mattress. That the accused again said that he didn't want Salome in the house as he would kill her. PW 1 told the accused that since Salome had paid deposit for the house the house belonged to her and that it was the accused to leave. That accused started crying when he heard he was the one to leave. That



- Salome said that her issue was the threats issued by accused who even threatened to kill her and commit suicide.
7. PW 2 called the accused aside to speak to him and told him to avoid violence. That after lengthy discussions accused agreed to go away and calm down before coming back to the house. The following morning at 4.00am, PW 1 was woken up by screams and he rushed to scene very fast and he found 3 people lying on the ground in the corridors.
  8. That the accused lay unconscious and had a blood stained knife in his hands he had injuries on his head. That people wanted to lynch the accused but he restrained them. That the deceased also lay in the corridor and was still speaking faintly while holding his chest and saying “amenua, amenua”. PW 1 said he also found Salome lying on the ground and the whole body was covered with blood and was only covered with a lessa.
  9. PW 2 called the OCS Makupa Police station and he also called County Ambulance to take Salome and William to hospital. That he also looked for means to take accused to hospital. PW 2 said before he left scene to accompany the accused to hospital police had arrived. That he went back to scene where scenes of crime officers took photographs and knife that accused had was recovered. PW 1 said that according to Salome the accused person did not want to work.
  10. PW 3 Salome Orogo testified that the accused was her husband and that the deceased was their neighbour. PW 3 testified that on 1/2/2018, she decided to go and report to village elder known as Riziki that accused had threatened to kill her. That in company of Riziki and Nelson PW 2 they decided to go and hear accused persons side of the story. That they found accused seated on the bed and Nelson asked why John was chasing her. That John said that he had nowhere to go and he should be taken to Makupa police station. That accused started shedding tears and the Balozi’s decided to go and talk to him outside the house. That when he returned to the house he took some of his clothes, a bag and left without saying where he was going.
  11. PW 3 said she had not cleaned the house so she cleaned and prepared food. That at about 8.00pm the accused returned and asked to be given ticket to go home. PW 3 told him they should eat first before she could take him to a vehicle. That they had supper and went to sleep.
  12. PW 3 said she used to keep her flasks and other utensils for selling porridge and tea outside the deceased persons house which was next to the gate. That she woke up at 3.00am as usual to prepare porridge & tea outside the house. That after preparing she went to take a bath. That when she went back to the house to dress the accused who was lying on bed stabbed her on the stomach when she reached out to get a dress from a bag near the bed.
  13. That when he stabbed her on upper part of chest a second time, she asked why he was stabbing her. That when she turned to run he stabbed her on the neck from behind. That she ran out of the house while screaming and went to William the deceased persons house as the accused pursued her. PW 3 said she hid behind the deceased and his wife and deceased asked the accused why he wanted to kill her. That the accused stabbed the deceased on the chest and he fell. That the wife of the deceased pushed the accused and managed to escape after she had been cut.
  14. That PW 3 remained with the accused and they started struggling as she tried to get hold of the knife which the accused pulled. That as it was pulled the knife cut her. PW 3 said the accused was aiming to stab her on the chest. That members of public responded to screams and came and beat the accused and the knife fell.
  15. She got an opportunity to escape but she fell outside as she had bled a lot. That an ambulance was called and she was taken to hospital. She said she learnt that Mzee William had died. She said she went to



- theatre for repair of gall bladder and diaphragm which were injured. That on February 8, 2018 police went to hospital and recorded her statement.
16. PW 3 was discharged on March 10, 2018 as per EXP 4(a) & (b). PW 3 identified the knife that the accused used to stab as an EXP 3. She also identified photographs taken at scene – EXP 2. In cross examination, PW 3 said that 3 days prior to 1/2/2018 the accused had threatened her. She said there was a time she made a report of the threats.
  17. PW 4 CPL Albert Mwarabu testified that on 2/2/2018 at 5.30am he received a call from Inspector Christopher Kenga who informed him he had received a distress call from Nelson Ochieng the village elder of Kaa Chonjo Village. That in company of PC Driver Maraga in motorvehicle GK A416H they proceeded to the said village and on arrival the village elder led them to an old house with several rooms and tenants. That there was a crowd at the entrance to the house and in the corridor there were 3 people who lay unconscious in a pool of blood.
  18. PW 4 identified the 3 as Salome, the deceased and the accused person. That he also recovered a knife next to the deceased and it had blood stains – EXP 3. That he handed the knife to PC Kipteim. That with help of Village Elder Nelson Ochieng they organized for an ambulance from County Government which took the 2 victims to Coast General Hospital while accused was taken to same facility by tuktuk.
  19. That on inquiry PW 4 established a quarrel ensued between accused and Salome Orogó and that when the deceased intervened he was stabbed by the accused. PW 4 learnt that William died on arrival at the hospital and body was taken to the mortuary for preservation. PW 4 called DCI Mombasa to take photographs at the scene – EXP 2- Bundle of photographs. PW 4 arranged for post-mortem to be conducted after body was identified by PW 5 the son to the deceased.
  20. PW 6 Scholastica Wanyoku Stephens testified that on 1/2/2018 the deceased visited her at 9.30pm and spent the night in her house. That on 2/2/2018 at around 5.45a.m she had woken up to go to the shop. That the deceased had also woken up to help her prepare to go to the shop. That while preparing they heard PW 3 – Salome who was their neighbour screaming. That she got out and when at the door she saw PW 3 run towards her house which was near main gate.
  21. That the deceased also followed her to see what was happening. That PW 3 pushed her and entered the house leaving the deceased at the door. PW 6 said the accused was pursuing Salome who ran into their bed and the accused met the deceased at the door. PW 6 heard the deceased say ‘amenidunga kisu’. That the accused managed to follow the wife into the house.
  22. That because it was abit dark in the house, he started going round looking for her and when she saw him go towards her he pushed him and managed to run away. That she found the deceased seated in the corridor holding his chest. PW 6 ran out of the gate and when she returned she found the deceased had failed. That Salome had also fallen and was naked save for underwear. That Salome’s body was all bloody and the deceased was also bleeding.
  23. PW 6 said she also saw the accused lying on the ground in the corridor. That Salome’s screams had attracted members of public who gathered outside. She said accused cut her on the left side of the hand and neck and when police came she was also taken to hospital. That while at the hospital she heard the doctor say William had died.
  24. She said the deceased was her manfriend and used to visit her and could spend at her place. She said the deceased knew the accused because the accused was her neighbour. She said her house was the closest to the gate while Salome’s was at the extreme end. She said there were other houses in between.



25. PW 6 said the deceased was at the door going to see what was happening when he met the accused who stabbed him. She said Salome had been stabbed by the time she ran to their house and she was soiled with blood. She said she used to greet the accused but didn't know his nature
26. When accused was placed on defence he testified that on 1/2/2108 the village elder went to his place and told him he should leave as the house did not belong to him. Accused said he was staying with his wife Salome. He said that he lost his job at Dola 3 months prior to 1/2/2018. He said he had differed with his wife when she told him he should go home since he didn't have a job.
27. That when the Village elder told him to leave he left and went away but returned after 2 hours to ask for fare from his wife but he was not given fare. That she told him she would give him fare the following day. That he spent the night with the wife in the same house. That the next day he was sleeping when at about 5.00am he heard his wife screaming. He said his wife was cooking outside and that it is when she went to take the food to the gate that he heard her scream.
28. He said that there were 4 rooms between their house which was at the extreme end to the gate. That the deceased who used to visit his girlfriend at the estate stayed in the 1<sup>st</sup> house to the gate. That when he heard screams he got out and before he got to the gate he was hit on the head & also stabbed on left upper arm. That he was also stabbed on left ear, left eyebrow and waist. He said he didn't see who stabbed him as he fell in the corridor when he was hit. He said he found himself in the hospital and he didn't know who killed the deceased.
29. He said they lived cordially with his wife. That he also knew the deceased and they used to greet each other as neighbours. Accused said he regained consciousness after 2 days and that is when he was arrested and taken to the police station where he stayed for 2 weeks before being taken to court.
30. In cross examination accused said he had no problem going home and he only asked for fare from his wife. He said he had no witness who saw him being hit. He said that PW 6 was a neighbour and he had not differed with her. He also said he had not differed with the village elder – PW 2. He denied that he was attacked after stabbing the deceased.
31. The accused persons counsel sought for time to file submissions and they were filed on October 18, 2021 but accused absconded and was only arrested and brought to court on 3/1/2022.
32. From the evidence on record for the prosecution and defence as well as submissions, the issue for determination is whether the prosecution has proved beyond all reasonable doubt that the accused committed the offence for which he has been charge.
33. The ingredients of the offence of murder which the prosecution ought to prove were well set out in the case of *Antony Ndegwa Ngare v Republic* [2014] eKLR as follows:-
  - i. Fact of Death
  - ii. Cause of death
  - iii. Whether cause of death was an unlawful act and/or omission
  - iv. Whether the unlawful act was committed by the accused
  - v. Whether the accused was actuated with malice aforethought while committing the unlawful act.



34. That the deceased died is not in dispute. All prosecution witnesses and the accused have alluded to the same. PW 1 in Post-mortem Report – EXP 1 said the deceased death was caused by hemorrhagic shock secondary to penetrating chest stab wound.
35. During examination of the body of the deceased, it was observed that he had multiple cut wound on the head-occipital & parietal. He also had facial cut wound on right cheek, stab wound on left upper chest, 2 sharp stab wounds around left elbow; He also had fracture of left ribs 2 & 3. There was muscle hemorrhage & tear of the intercostal muscles; rupture wound to the upper lobe of left lung with hemothorax.
36. There was also small puncture to left atrium of the heart with blood in the pericardial space. The multiple injuries on the body of the deceased were not accidental. They were inflicted unlawfully and PW 3 & PW 6 said it is the accused who inflicted those injuries. He wanted to cause grievous harm to his wife but when the deceased stood in between he fought him with rage and caused fatal injuries.
37. Evidence is that he attacked PW 3 in the house by stabbing her in the abdomen and on upper part of the chest, when PW 3 escaped and sought refuge at the deceased house, accused met him at the door and stabbed him on the chest in order to gain access to the house in hot pursuit of the wife. PW 6 said when she escaped from the house where she left accused & Salome-PW 3 she found the deceased holding his chest and was seated in the corridor.
38. It appears that the other multiple stab wounds were inflicted on the deceased after the accused came out of the house where he was left struggling with the wife Salome-PW 3.
39. The multiple injuries inflicted on the deceased and PW 3 & PW 6 can only be attributed to malice aforethought. They are injuries on vital organs of the body and were aimed at maiming and/or killing the subject as it happened herein. PW 3 & PW 6 are witnesses that it is accused herein who inflicted those injuries and his defence that he heard his wife scream at the gate and he responded is an afterthought and cannot stand in the face of evidence by PW 3 & PW 6.
40. This court finds that the prosecution has proved beyond all reasonable doubt that accused murdered the deceased and he is convicted accordingly.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 01ST DAY OF APRIL 2022**

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

**In the presence of:-**

**Ogwel- Court Assistant**

**Mr. Ngiri for State**

**Ms. Nasimuyu Advocate for Accused person**

**Accused – Present in person**

**Hon. Lady Justice A. Ong'injo**

**Judge**

**Ms. Kambaga**

**Accused may be treated as 1<sup>st</sup> Offender.**

**Order**



**Mention 6/6/2922 for Victim Impact Statement, mitigation & sentencing. Production to issue.**

**Hon. Lady Justice A. Ong'injo**

**Judge**

