



**Republic v Wangare (Criminal Case 9 of 2018)
[2022] KEHC 10662 (KLR) (26 May 2022) (Judgment)**

Neutral citation: [2022] KEHC 10662 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 9 OF 2018**

RB NGETICH, J

MAY 26, 2022

BETWEEN

REPUBLIC PROSECUTOR

AND

FRANCIS NJUGUNA WANGARE ACCUSED

JUDGMENT

1. The accused Francis Njuguna Wangare was charged with the offense of murder contrary to Section 203 as read together with Section 204 of the *Penal Code*. Particulars are that on 12th February 2018, at Kimangu Catholic Church within Nakuru County, he murdered Francis Imili Mzee.
2. The charge and its full particulars are that on the 10th February 2020. He pleaded not guilty to the murder. He responded he hit the deceased who died as a result of the injury.
3. The brief facts are that on 11th February 2018 at 8.30 a.m. at Kimangu Catholic Church worshippers had assembled to worship including the deceased Francis Imili Mzee who was at the door serving as usher with Patrick Karimi, Simon Kamande, and Joseph Kamau, when the accused came in forcefully through the door armed with a big piece of wood. He pushed and hit the deceased with a wood at the back of the forehead. The deceased fell. Patrick Karimi responded immediately and other worshippers came to help and they overpowered the accused. The deceased was taken to Rongai Sub-County Hospital and thereafter he was taken to Nakuru PGH. The deceased was pronounced dead the following day. A post mortem report produced indicates the accused suffered from a deep cut wound on the head.
4. The prosecution called a total of 6 witnesses to prove their case of murder on the accused.



Prosecution's Evidence

5. PW1 Patrick Karimi Muberi testified that on 11th February 2018, he was in church from 9.30 a.m. to 10.00 a.m when the accused Njuguna entered the church with a stick and hit the usher Francis Imiri making him fall down. PW1 said he rushed to the scene and held the accused and other worshippers joined in and they managed to overpower the accused. They tied his hands and legs and called the police who arrived at the scene and arrested the accused. The deceased was rushed to the hospital. He positively identified Njuguna as the accused in the dock as the person who hit the deceased in church.
6. PW2 Simon Kamande Ngite testified that on 11th February 2018 at around 9.30 am while in church, he heard some noises from a lady then he saw PW1 holding a young man with a stick. He rushed to the scene and saw Francis Imiri on the floor. He confirmed that the deceased was rushed to Rongai dispensary where he was given first aid before being taken to Nakuru provincial General Hospital. He identified the accused as the man who hit the deceased.
7. On cross-examination, he confirmed he saw the deceased lying on the ground and PW1 was struggling with the accused.
8. PW3 Joseph Kamau Kiremire stated that he was in church when he heard screams and on looking, he saw the deceased lying on the floor and PW1 was holding the accused. He said he reported to the parish chair who called the police. A knife was recovered from accused's pocket at the police station.
9. PW4 Violet Miringa Muse testified that at 10.30 a.m., she received a call informing her father Francis Njuguna was not doing well. She called her mother and they agreed to meet at the Nakuru General Hospital. On arriving at the hospital, her father was dead.
10. PW5 No. 211004 Sergeant Michael Koskei testified that on 11th February 2018 while at the police station, he received a call from Inspector Kamata at 9.30 a.m. who asked him to go to Kimango Catholic Church. Together with his colleague he went to the church where he found the church chairman and committee members who had arrested and handcuffed the accused. Upon inquiry, he learnt that the accused had entered the church with a stick and hit the deceased. They arrested the accused person and took him to Rongai Police Station and while at the police station, they found a knife in accused's pocket.
11. PW6 Dr. Biketi produced in court postmortem report dated 16th February 2018 prepared by Dr. Shabola Achesa who was admitted at Valley Hospital. He testified that the postmortem report confirm that the deceased died as a result of massive epidural hemorrhage resulting in blood trauma to the head due to the injury sustained.

Defence Case

12. In his defence, the accused chose to adduce sworn evidence. He stated that on 11th February 2018 while at his home he took cannabis and got disoriented. He said he went to church and killed somebody though he did not intend to kill. He said he had previously been arrested for the offence of loitering at night.
13. On cross examination by Ms. Rita Rotich for the state, he stated that he had taken bhang and thought of going to church and killing someone but he did not intend to kill.
14. Parties chose not to file submissions.



Analysis and Determination

15. I have considered evidence adduced. There is no dispute that the deceased died as a result of injuries sustained upon being hit on the head. The accused admitted killing a person in church but denied intention to kill and said that it was as a result of taking bhang. What I wish to consider is whether the accused actions or omissions were actuated with malice aforethought.
16. The accused stated that after taking bhang/cannabis, he felt the urge of killing and went straight to the church where he hit the deceased with a stick on the head. It is not disputed that the deceased died as a result of the injury sustained occasioned by the accused.
17. Section 206 of the [Penal Code](#) defines malice aforethought as:
 206. 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 killed or not;
 - b. The 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.
18. The prosecution is only required to prove only one of the above in elaborating the accused had malice aforethought in his acts or omissions. The accused told the court he took cannabis and he felt the urge to kill.
19. There is no confirmation that the accused was under influence of cannabis or any drug at the time he hit the deceased. He never produced any medical report to confirm that his mental state was impaired as a result of either cannabis or any drug. He also took time from his house to the church and targeted one individual in church which clearly showed that he had the mense rea which he carried out through act of hitting the deceased's head in church.
20. The fact that the accused went ahead to arm himself with a knife and the stick is no doubt he had the intent of killing or causing grievous body harm.
21. From the foregoing, I find that the charge against the accused has been sufficiently proved and proceed to convict him accordingly of the offence of murder contrary to Section 203 as read together with Section 204 of the Penal Code.

JUDGMENT DATED, SIGNED AND DELIVERED AT KIAMBU VIRTUALLY THIS 26TH DAY OF MAY, 2022

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RACHEL NGETICH

JUDGE

In the presence of:

emboi - Court Assistant

Ms. Rita Rotich for State

Mr. Murunga for Accused absent

