



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Maina (Criminal Case 43 of 2020)
[2022] KEHC 12086 (KLR) (28 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 12086 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE 43 OF 2020**

SN RIECHI, J

JUNE 28, 2022

BETWEEN

REPUBLIC PROSECUTION

AND

EMILY KHAKASA MAINA ACCUSED

JUDGMENT

1. The accused Emily Khakasa Maina is charged with offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. The particulars of the offence are that on the 15th day of August, 2020 at Miendo sub-location, Miendo Location in Webuye West Sub-county within Bungoma County, you murdered Maurice Maina Matayo.
3. The case for the prosecution is that the accused Emily Khakasa Maina was the wife of deceased Maurice Maina Matayo. On August 15, 2020 PW1 Catherine Wasike was at her house preparing supper at 6 p.m. when her children told her that the deceased was at their farm. He went there. Deceased told her that his wife the accused had assaulted him because he had eaten food prepared by his daughter in-law. She noticed he had injuries on the head. She advised him to go and report to the village elder. She left him going to the village elder. On August 17, 2020 she received information that deceased had died. She testified that on this material day deceased was wearing a jumper (MF1) and Jacket (Exh.2). She also identified a crutch the deceased was using for her mobility. On being cross-examined by Wekesa for accused, she confirmed that deceased used to drink and they would fight with the accused. He confirmed that on this material day the deceased was bleeding from the head.
4. PW2 Beatrice Nekesa Chakali the village elder of Muyokwe village was at her home when deceased went to her and reported that he had been assaulted by his wife the accused. She observed him and saw he had injuries on the head and leg. She went to the home of accused and asked her about assaulting



- the deceased. She denied doing so. The deceased feared going to the home. She called deceased relatives who then escorted him to his house where they left him outside at 8.30 p.m. Later in the night she received information that accused had brought another man to the house who was beaten by deceased's relatives. After 3 days she received information that deceased had died.
5. PW3 Richard Chakali Mukenya the chairman of Baabuya clan received a telephone call from one Walela who informed him that deceased had been found in a sugarcane farm having been killed. He found the body had been taken by police to the mortuary. He later attended the post mortem.
 6. PW5 Richard Masika Wepukhulu testified that on August 21, 2020 at 4 p.m. he went to collect sugar cane leaves from the farm of Daudi when he saw a body of a man lying facing down. He saw the body had wounds on leg and head and was bleeding from the wounds. He went and called Daudi the owner of the farm who called David Khaemba the assistant chief.
 7. On being cross examined by Wekesa for accused, he stated that one of the wounds was fresh and bleeding. PW6 No. 23XXX PC. Evans Matete the Investigating officer took over the file from officers from Matisi police station. He also received clothes which the deceased was wearing. A navy blue trouser, Navy blue Jacket which he produced as exhibit. He recorded witness statements and caused accused to be charged with present offences.
 8. PW7 Dr. Mohamed Nur who performed the post mortem on the body of the deceased testified that the deceased had laceration and bruises on the body. Cut wound on the skull, skin had peeled off, dislocation on knee cap, of left leg haematoma on the brain. From the examination he saw the body was decomposing and the cut wound approximating 2-3 days old. He formed opinion that cause of death was due to blunt trauma leading to bleeding. He prepared the post mortem report which he produced as Exh.4.
 9. The accused gave sworn evidence in her defence. She testified that the deceased was her husband. She stated that the deceased had a mental problem and left home on August 19, 2020 at 8.am. after breakfast. He did not come back. On. August 21, 2020 at 6 p.m. a boda boda rider came and informed her deceased had been killed. He took her to where the body was found about 2 km away at the farm of Daudi Isakia Namulungu.
 10. On being cross-examined by M/s Mukhangu for prosecution, she stated accused had a known history of mental problem and had even burnt a house. She stated that the prosecution witnesses Catherine (PW1) has a land dispute with them and there is a case at Webuye court over the same.
 11. Mr. Wekesa for accused filed written submissions. Counsel submitted that none of the prosecution witnesses saw the accused inflict injuries on the deceased. He submitted that the deceased was found 2 Km away from home on August 21, 2020 with bruises showing defensive injuries, knee cap had been dislocated which pointed out to deceased having been assaulted but the investigating officer would not point as to who inflicted the injuries.
 12. The accused is charged with the offence of murder contrary to Section 203 of the [Penal Code](#) Section Provides:

“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
 13. The ingredients of the offence that the prosecution must prove beyond reasonable doubt against the accused are:
 - a) The fact and cause of death.



- b) The unlawful act or omission causing the death
 - c) That it is accused who caused the unlawful act or omission or inflicted the injuries that caused the death of deceased.
 - d) That the accused committed the unlawful act with malice aforethought.
14. PW7 Dr. Mohamed Nur who performed the post mortem on body of the deceased found that the deceased had lacerations and bruises, deep cut wound on the skull, hematoma on the brain and dislocated left leg knee cap. From the examination he formed opinion that the cause of death was severe anemia caused by haemorrhage. He produced the post mortem form Exh.4. His evidence therefore confirmed the fact and cause of death. Who caused these injuries from which the deceased died?
15. PW1 Catherine Wasike testified that on August 15, 2020 she saw the deceased at her farm who complained that he had been hit by his wife the accused. The deceased showed him an injury on the head. He advised him to report to the village elder. This witness confirmed that she did not see or was not present when deceased was being assaulted by the accused. She stated that the injury was bleeding but not much.
16. PW2 Beatrice Nekesa Chakali the village elder testified that the deceased came and reported to her on August 15, 2020 that accused had assaulted him. She observed and notice he had injuries on the head and leg. He reported that it is his wife accused who had hit him with a clutch. She took the deceased to his home but he refused to go and remained on the road fearing accused may assault him again. She asked accused about the injury on deceased but she denied. She called relatives and they took deceased to his home where they left him outside at 8.30 p.m. After 3 days she received information deceased had died.
17. PW3 Richard Chakali Mukenya a relative a relative of the deceased testified that deceased's body was recovered on August 21, 2020 at farm of Dandi – about 2 Km from his home. He had injuries on the legs, buttocks and head. PW5 Richard only discovered the body at the farm.
18. The only evidence relating to the injuries of the deceased was that of PW1 Catherine and PW2 Beatrice the village elder. None of them testified that they saw accused inflicting injuries on the deceased. Indeed, their evidence was that the deceased informed them that accused had assaulted him using her clutch which was produced as exhibit. They all agree that he had injury on the head on that material day and was able to walk. However, when the deceased body was found on May 21, 2020 – 6 days later, he had more serious injuries including a dislocation of the left knee cap. None of the witnesses testified how he sustained these injuries which the doctor confirmed were the cause of his death. There was no evidence even from the investigating officer of what happened on the deceased from the time he was left outside his house on May 15, 2020 at 8.30 p.m. by the village elder to the date he was discovered 2 km away 6 days later.
19. The prosecution sought to rely on previous conflicts and assaults by the deceased as a basis for connecting her to deceased's death. I do not find this line of reasoning or evidence credible to connect the accused to the death of the deceased in absence of any other evidence. I therefore find prosecution have not established a charge of murder against the accused beyond reasonable doubt.
20. I therefore find accused Emily Khakasa Maina not guilty of the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#) and acquit her accordingly.
21. I therefore order the accused Emily Khakasa Miana be set at liberty unless otherwise lawfully detained.

DATED AT BUNGOMA THIS 28TH DAY OF JUNE, 2022



S.N RIECHI
JUDGE

