



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Cacii (Criminal Case E049 of 2021)
[2022] KEHC 10920 (KLR) (23 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 10920 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE E049 OF 2021
TW CHERERE, J
JUNE 23, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

BONFACE MURITHI CACII ACCUSED

JUDGMENT

1. Bonface Murithi Cacii (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 the night of 14th and 15th April, 2021 at Mikumbune location in Imenti South Sub-County within Meru County murdered Princess Kawira

Prosecution Case

2. The prosecution case as narrated by PW1 Mary Nchabera, mother to Princess Kawira (Princess) is that on the night of 14th and 15th April, 2021 at about 10.00 pm, Accused who was her ex-husband entered her house after breaking the door and finding her in bed with her children attacked her with a panga injuring her seriously and in the process fatally injured 6 year old Princess causing her death.
3. PW2 Japheth Kimathi and PW3 Stephen Gatobu on the night of 14th and 15th April, 2021 rushed to Pw1's house after receiving information that she and her daughter had been injured. That on arrival, they found a little girl lying dead and organized for PW1 who was injured to be taken to hospital. Both stated that they did not find Accused at the scene of crime but that PW1 informed them that Accused who was her ex-husband had attacked them.
4. Accused was subsequently arrested and charged. With the consent of defence counsel, the investigating officer tendered the autopsy for Princess as PEXH. 1 filled by Dr. Misiko and it reveals that Princess suffered the following injuries:



1. 20 cm linear gaping cut wound extending from right frontal area in angular direction to the left frontal area upto the left area of the nose with underlying skull fracture and exposed brain tissue
2. Fracture and 5 cm deep cut on left elbow
3. 4 cm cut on left forearm
4. An opinion was formed that Princess died of severe head injury caused by deep cut wound.

Defence Case

5. In his sworn statement, Accused stated that he was married to PW1 and were blessed with a child Princess Kawira. He stated that on the night of 14th and 15th April, 2021, he returned home at about 10.00 pm and when PW1 opened the door for him, he realized that she was armed with a panga. That as they struggled over the panga, Princess was cut on the head.

Analysis and determination

6. 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.”

7. I have considered all the evidence availed in this case as set out above and the issue in question is whether the prosecution has proved the death of the deceased; that Accused caused the death and that he was actuated by malice.

a. The death of the deceased

8. The postmortem form PEXH.1 reveals that the deceased that Princess sustained a 20 cm linear gaping cut wound extending from right frontal area in angular direction to the left frontal area upto the left area of the nose with underlying skull fracture and exposed brain tissue, fracture and 5 cm deep cut on left elbow and a 4 cm cut on left forearm and had died of severe head injury caused by deep cut wound.

b. Proof that accused person committed the unlawful act which caused the death of the deceased

9. Accused explained that it was PW1 and not him that was armed with a panga and that and that he was struggling with PW1 over the panga when Princess was fatally wounded. I have considered the defence *vis a vis* cross-examination of PW1 and I find that the defence is an afterthought for the reason that it was not raised when PW1 testified to enable her answer to the allegation that there was a struggle between her and Accused.
10. Consequently, I find that the prosecution case that Accused without any provocation attacked PW1 and in the process committed the unlawful act in which Princess was fatally injured proved.



c. Malice aforethought

11. 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.”
12. 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.
13. That the injuries inflicted on Princess were so severe and concentrated on the head can only mean that they were intended to cause her grievous harm if not death and Accused ought to have known that such serious injuries could probably cause the death of or grievous harm to the young girl Princess. I am therefore satisfied that malice aforethought has been established in terms of Section 206 (a) and (b) of the *Penal Code*.
14. Consequently, I have come to the conclusion that the state has proven its case beyond reasonable doubt. Accused is found guilty of the offence of murder and he is accordingly convicted.

DELIVERED AT MERU THIS 23RD DAY OF JUNE 2022

WAMAE. T. W. CHERERE

JUDGE

Court Assistant - Kinoti

Accused - Present

For the Accused - Mr. Ng'entu Advocate

For the State - Ms. Mwaniki (PPC)

