



**Republic v Waituru (Criminal Case 3 of 2018)
[2022] KEHC 10809 (KLR) (28 July 2022) (Judgment)**

Neutral citation: [2022] KEHC 10809 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CRIMINAL CASE 3 OF 2018
CM KARIUKI, J
JULY 28, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

VERONICAH WANJIRU WAITURU ACCUSED

JUDGMENT

1. The Accused is charged with the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#) Cap 63 Laws of Kenya.
2. Particulars being that on December 22, 2017, Particulars at Manyatta village Kianjata Sub- Location Kiwanja Location in Nyandarua West Sub-County within Nyandarua Country murdered Regina Wangari Waituru.
3. The accused pleaded not guilty, and the matter went into full trial. To prove its case, the Prosecution called six witnesses. However, while the accused was put in her defence, she opted to remain silent, i.e., she did not tender any testimony in her defence.
4. The parties were directed to file their submissions and opted to take 14 days, and a judgment date was given.
5. At the time of this judgment, none has put the submissions; however, I note the Prosecution opted to rely on evidence on record while the accused Advocate sought 21 days to file and serve written submission none has been put three months since then, this Court will proceed to prepare judgment without submissions.
6. The Prosecution case commenced with testimony of PW 1 Beatrice Wangeci when she narrated that on December 22, 2017, while sitting outside her house, Wanjiru, referring to the accused, entered her compound and told her that Wangari, the victim in this matter, had fallen and that an onion was



required to be rubbed on her feet for her to raise up. The witness did not have an onion. She went to fetch one at the shop at Manyatta. Meanwhile the accused Wanjiru proceeded to the scene where the victim was lying, but she remained afar. PW1 rubbed onion on Wangari's feet, but an older adult told her to stop. There are other on-lookers around. The victim was lying near a borehole outside their house. Wangari (victim) and Wanjiru (accused) were sisters.

7. The witness has been their neighbour for over 20 years, and she knew the two (2) and never used to agree or talk to each other. It was said that Wangari was dead by a community elder. The daughter of the accused, Njeri, was also present. Police were called from Oljoro orok police station. It used to be said that Wanjiru Accused was mentally unwell. The witness did not see any injuries on the victim's body. On Cross-examination, she said she found many people at the scene where the victim's body was lying.
8. PW 2 Joseph Mbugua Wangari is the son of the deceased. He narrated that on December 22, 2017, he had left home at 7.30a.m; to go to the workplace where he used to do a casual job. When he reached home, he found the accused with a crow bar. He called his mother to get it from the grandmother's house. The accused is her aunt (sister to his mother). His mother was given the crow bar by his cousin Esther Njeri Wanjiru. Esther Njeri called the witness and told him that his mother (victim) had fainted; she told him she had given his mother a crow bar, but Wanjiru (accused) followed her. Witness called his mother's phone, but only Esther picked it up. Witness proceeded to their home and found his mother lying down and a crowd milling around the scene. He touched her and said she was dead—the accused. The accused was not present at the scene. She came later and said even if she did it, "we would have to go agree it at the council."
9. He stated that the accused used to say that the Land was left to her by their mother, and Regina (victim) and brother Peter had no share. Witness's mother used to live in the same Land. The Land was owned by their late mother (witness); the grandmother used to say the accused (Veronica) had mental problems and used to take drugs. Veronica (accused) had warned the witness that they were not supposed to be on the Land in the issue. The accused son who had killed the witness, young sister Cecilia, was arrested, charged, and later released.
10. The witness at the scene saw a crow bar 4 meters from where the victim lay. He identified it in Court. He did not observe any injuries on his mother's body, but later after the post-mortem, he witnessed and identified his mother's body; a hole in the head and swelling on the back near the shoulder were noted.
11. On cross-examination, he stated that the relationship between the accused and the deceased (both sisters) was terrible. However, they used to talk to each other though they lived in the same Land.
12. PW 3 CIP Stephen Ambani was the investigating officer who got a report of murder from OCS Omondi of murder after Chief Kiwanja made it to the police station. Witness visited the scene with other officers and found a body at the scene. The people at the scene said the victim was killed by her sister Veronica Wanjiru (accused); the scene was very documented, and photos were taken. Witnesses noticed struggle evidence at the scene. He gathered that accused and deceased were struggling over the crow bar borrowed from Esther. Esther was at the scene and handed over the crow bar to the area chief. The body was taken to Nyahururu Hospital mortuary, and the accused was arrested and taken to Oljoroorok police station; post mortem was conducted, and the Psychiatrist and history examined the accused was a mental health patient vide report dated June 14, 2019. Post mortem Esther (accused daughter) witnessed the incident. She saw the accused and deceased engaged in struggle. She saw the accused run away from the deceased on the ground, and she repossessed the metal bar from the accused (her mother). Crow bar was produced as an exhibit.



13. The Doctor's report (post mortem) indicated that the Deceased had an injury on the left lobe of the lunar lines; thus, the cause of death was massive bleeding following laceration of the left lobe of the liver. P exhibit4. Post mortem produced PW5.
14. PW 4 was a scene of crime officer Corporal Edward Esanya who visited the scene with investigating officer and documented the scene via photograph. He produced five photos showing the scene and body of the victim.
15. At the close of the Prosecution case, the accused was called to put her defence, but she opted to remain silent.
16. Thus, the Court proceeds to make a judgment on the material before the Court.
17. The record shows that the accused has mental health starting with a letter of January 4, 2018, where she was noted to lack insight into the happenings and could follow proceedings. She was referred to Mathare Hospital for treatment on June 20, 2019; the report dated June 14, 2019 from Psychiatrist Nakuru level 5 hospital indicated that she was suffering from a psychotic disorder and mild mental retardation though opined that she could stand trial.
18. On December 11, 2019, another Psychiatrist report dated December 11, 2019 the same Nakuru hospital indicated that the accused had a mental illness. She had schizophrenia but opined that she could follow proceedings. The defence has raised any defence of insanity or otherwise thus but opted to remain silent. Therefore, the court will continue to analyse the evidence tendered by the prosecution keeping in mind that the onus is on the prosecution to prove its case beyond reasonable doubt.
19. In *Woolmington v DPP* [1935] AC 462 and also *Miller v Minister of Pensions* [1942] AC Lord Denning stated on this phrase of beyond reasonable doubt as follows:

“It need not reach certainty but it must carry a high probability. Proof beyond reasonable does not mean proof beyond the shadows of doubt. The law would fail to protect the community if it admitted forceful possibilities to deflect the course of justice. If the evidence is so forceful against a man to leave only a remote possibility in his favour which can be dismissed with the sentence, of course it is possible but not at least probable, the case is proved beyond reasonable doubt but nothing short of that will suffice”
20. The case and findings of *Republic v Ismail Hussein Ibrahim* [2018] eKLR. Being guided by the holding in the case of *United States v Smith* 267 f.3d 1154, 1161 (DC, GR, 2001) citing in *re Winship*, 397 U.S 358 370,90 S. ct. 1068, 1076 [1970] (Harlan J., concurring) as cited in the case of *Ismail Hussein (supra)*, the Court stated;

“The burden is upon the state to prove beyond reasonable doubt that the defendant is guilty of the crime charged. It is a strict and heavy burden. The evidence must overcome any reasonable doubt concerning the defendant's guilty, but it does not mean that a defendant's guilt must be proved beyond all possible doubt. A reasonable doubt is a fair, actual and logical doubt based upon reason and common sense. A reasonable doubt may arise either from the evidence. Reasonable doubt exists when you are not firmly convinced of the defendant's guilt, after you weighed and considered all the evidence. A defendant must not be convicted on suspicion or speculation. It is not enough for the state to show that the defendant is probably guilty. On the hand, there are very few things in this world that we know with absolute certainty. The state does not have to overcome every possible doubt. The state must prove each element of the crime by evidence that firmly convinces each of



you and leaves no reasonable doubt. The proof must be so convincing that you can rely and act upon it in this matter of the highest importance. If you find there's a reasonable doubt that the defendant is guilty of the crime, you must give the defendant the benefit of that doubt and find the defendant not guilty of the crime under consideration”.

21. 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.
22. On first element, nobody witnessed the incident as the only witnesses who was within the vicinity Esther wangare was not called to testify and no reason was advanced by the prosecution as to why she was not called to testify. Thus, as to the cause of death the pw5 testified and produced post-mortem report PEXH 4 indicating that the cause of death was massive bleeding following laceration of the left liver.
23. There are no external injuries noted. According to the prosecution, the possible weapon used was a crow bar found a few metres from where the deceased was lying. The doctor did not explain how the crow bar, a metal bar could have occasioned liver laceration with out leaving any notable external injuries.
24. *Oxford English Dictionary* define liver laceration as liver injuries commonly caused by motor vehicle accidents, gunshot wounds or stabbing wounds or even a blunt object. When pw3 Investigating officer questioned accused, she said they struggled over crow bar with deceased but no evidence accused ever hit the deceased nor was there evidence that she sustained any external injuries but she fell down.
25. At the time of the incident the accused was suffering from psychotic disorders demented or of unsound mind and by psychiatrist report of 14/6/2019 she had mild mental retardation. This could explain her inability of her not being able to explain the unfolding of the event in the material day.
26. A fall on the ground could cause injuries noted on liver depending on fall and the measure of impact. In their struggle accused and deceased could have occasioned the fall of the deceased and resultant injuries.
27. In criminal proceedings, a fundamental principle is that an individual is innocent until proven guilty. Therefore, it is for the prosecution to prove that the defendant has committed a crime by establishing, beyond reasonable doubt, every element of the offence in question.
28. What is the right to remain silent? The accused does not have to prove he or she did not commit the crime (unless he raises an appropriate defence). This means, in theory, that the defendant does not need to say anything. This is the fundamental human right to remain silent. See Art 50 *Constitution of Kenya*. In *Philip Nzaka Watu v Republic* [2016] eKLR held that “It is incumbent upon the prosecution to prove its case beyond reasonable doubt. Article 50(1) of *the constitution* provides for the right to remain silent and not to testify during the proceedings”
29. Thus, the first- element of murder that the death of the deceased occurred is uncontested and thus proved beyond reasonable. However, on the second element that, the accused committed the unlawful act which caused the death of the deceased remains un proved beyond reasonable doubt in view of the



analyses above the court finds that the prosecution has not met the threshold to warrant conviction thus the accused is acquitted and charges dismissed.

30. The court makes orders that;

- (i) The accused is acquitted and therefore accused is set at liberty forthwith unless otherwise lawfully held.

DATED, SIGNED, AND DELIVERED AT NYAHURURU THIS 28TH DAY OF JULY 2022.

CHARLES KARIUKI

JUDGE

