



**Republic v Okenyuri (Criminal Case 14 of 2019)
[2022] KEHC 12868 (KLR) (18 August 2022) (Judgment)**

Neutral citation: [2022] KEHC 12868 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 14 OF 2019
TM MATHEKA, J
AUGUST 18, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

CHRISTINE OKENYURI ACCUSED

JUDGMENT

1. This case is one example of what we call domestic violence and one of its aftermath when it is left unchecked, when family and society condone it as the norm, and it becomes the norm or “*kawaida*” in a family.
2. On February 25, 2019, the accused person was charged with Murder Contrary to section 203 as read with 204 of the *Penal Code*. It was alleged that on February 16, 2019, at Oljorai Location Gilgil Sub County within Nakuru County, she murdered Erick Kipkoech Tanui. The plea was taken on February 28, 2019, and she pleaded not guilty.
3. For PW1 The prosecution called EO, the minor son to the deceased and the accused person. He testified that on the night of December 16, 2019 his father came in at night. He asked him, the minor for food, and he the minor told his father that the food was in the kitchen. The deceased went to get the food. It was then that he the minor says he saw his mother take a piece of wood from the bedroom and went outside. He heard his parents begin to quarrel and the quarrelling went on outside. He never heard anything that was said. Neither did he see anything because he did not come out of the house.
4. The following morning he found his father lying outside the house, dead, and his mother was not home. He said he went to report to his shosho one Maria Sigara Osiemo.
5. On cross examination he said that his parents quarrelled, that he saw them fight one time. He said he saw his mother beat his father one time, though his father was stronger. Referred to his statement he said that his statement indicated that his mother had a panga on the material night, he said that this



- was not true. He asserted that that was not true because she only had a stick. He said it was his father's stick, but he did not know what his father used it for. He confirmed said that the statement was correct that he was deep asleep on the material night and did not hear anything. He also said that he woke up to give his father his food, and went back to sleep
6. PW2 Oliva Nyambeki, the mother to the accused person, told the court she was in her house sleeping on the material night of December 16, 2019. At midnight she was woken up by noise coming from her daughter's house. It sounded like a domestic quarrel. She said that she could not hear the words uttered but that it was usual for her daughter and her husband to quarrel she did not do anything and went to sleep till the next morning when she went and told her mother Maria Sigara what she heard at night. They both went to Christine's house. She told the court that she found "her son" the deceased lying outside the house at the door. He was dead. She noticed that there was blood on the right side of the body. Christine was not at home. She called neighbours who came and who called the police. She saw a stick which the police claimed was the murder weapon and which she was told was picked from the shamba.
 7. On cross examination she told the court that the accused was her daughter. That the deceased was her son in law. That although she did not witness the incidence she knew that it was her daughter who had killed her husband. She said she never saw the incident but she knew it to be so. That the two were married for long (20 years according to her) but they fought many times, and that Christine had gone home many times reporting that she had been beaten by her husband. She stated that the deceased was also a drunk.
 8. On 1February 9, 2019, the post mortem was conducted by Dr. Titus Ngulungu PW4 on the body of Erick Kipkoech. The matter was referred from Elementaita Police Station that the deceased was stabbed in the stomach by the wife. The body was identified by PW3 Sally Cheriro and PW5 Josephat Ngetich the brother to deceased. Dr. Ngulungu testified that the body had a laceration on the right side of the head about 25mm, a stab wound on the left chest below the left nipple, bruised on the left lateral aspect of the left orbit. The cause of death was cardiac muscle injury with haemo-pericardium. He took a blood sample for analysis. He confirmed that the size of the injury was consistent with the size of a conventional knife.
 9. PW6 No. 107 219 PC Salim Salat testified that he informed by his Deputy OCS and informed that a report was filed by the Area Assistant Chief Kongasis to the effect that a murder had occurred between husband and his wife, where the wife had stabbed the husband. In the company of the deputy OCS and other officers, they proceeded to the scene, where, he testified, the deceased lying in a pool of blood, dead. He said they also found the accused whom they arrested. According to him, she immediately confessed to the murder and led to them to the recovery of the murder weapons. He confirmed that there were domestic differences between the couple. He was not aware of any physical fights.
 10. He testified that the knife and the blood sample collected by the pathologist were taken to the government analyst.
 11. On cross examination he told the court that the accused did not record a confessionary statement. He told the court that she led them to an unused toilet where the 'content' was dry but he did not file any inventory.
 12. The government analyst report was not ready until May 14, 2020, and it was produced by PW7, Lucy Warukiri Wachira a government analyst. She said she received two items, the deceased's blood sample in a vacutainer, and a knife stained with blood. Her analysis bore the following result, "that the DNA profile from the blood stains on the knife match the DNA profile from the blood sample from Erick



Kipkoech Tanui and the probability of random match of $1:7.4 \times 10$ to the power of 17, which according to her, in simple terms, means that the blood on the knife matched the blood in the vacutainer.”

13. Upon finding that the accused person had a case to answer she was put on her defence. The accused person made a sworn statement and did not call any witness. She told the court that she is thirty four (34) years old and that she and the deceased were married since 2005 and had five (5) children between them the eldest being sixteen (16) years old and the youngest being two (2) years and nine (9) months. That their marriage was tumultuous: *maisha ya kusumbuana* as he had neglected his parental responsibilities. He would come home drunk with nothing for the family. He would beat her without provocation. He would start the *fujo* of fracas and would at times chase the children away to their grandmother’s home but to his credit he never beat the children.
14. On the material night the husband left home for the shopping centre. She and the children went to sleep. About midnight she heard the gate being broken. On looking out through the window she saw that it was her husband. She quickly went to open the door to avoid his breaking the door. When he came in he sat down. She offered to give him food but he refused telling her he would fetch it himself and told her to go back to sleep. She did as ordered. He called her and asked her to bring her water and his medication, as he had earlier on been beaten after breaking the windscreen of his father’s car. When she brought the water and the medicine, he hit her with his head and pushed her. She asked why he had pushed her he kept quiet. She removed the tray that had the food together with a knife that was on the table and placed them on the cupboard.
15. Apparently from the circumstances she decided to go to her grandmother’s home. For her safety she took her husband’s walking stick from the bedroom. As she was about to walk out he got hold of her and a struggle ensued. This struggle continued until they ended up outside the house where they both fell. It was then that she saw a knife fall out of his clothes. Now a struggle ensued for the possession of the knife. Her husband was telling her he would kill her because even the pregnancy she was bearing did not belong to him. She managed to get hold of the knife but he held her shirt so tight she could not free herself try as much as she could. She screamed but no one came to her aid. She was certain that he was determined to kill her and in her own words: *nikapandwa na ile hasira nikamndunga*: that she found herself having stabbed him once in the abdomen, because to her had he reached the knife fist he would have stabbed her.
16. After she stabbed once, she got up and left for her shosho’s. Her shosho simply asked her whether they had disagreed and she said yes. Her shosho simply told her to go to sleep.
17. The following morning she came back to her home early in the morning, fearfully because there were times when the deceased would beat her again when she returned home in the morning from her shosho’s. She called out and noted that the homestead was silent. She went in, and saw that her husband was lying there on the ground dead in a pool of blood.
18. In the shock that followed, she picked the knife, threw it in an unused toilet in the shamba, and left the stick there, then went to the police station. She said she reported to the OCS what had happened. The OCS placed her in the cells. Later on, the OCS told her she had killed her husband and she was taken to court.
19. On cross examination by the prosecution counsel she told the court that she did not think about killing her husband. That when he hit her and she decided to leave her home. That when she took the stick her son EO was awake but she could not tell whether he had witnessed the incident. That she was not thinking when she stabbed the deceased. That the way in which he was holding onto her led her to stab him to free herself. She said, “*Hasira ilipanda, nilishtukia nimemdunga*” as she felt he was going to kill her. Asked why she did not hit him with the stick, she said she was not thinking. It just happened.



She said that that night she did not know that she had actually stabbed him. She thought the knife had gone through his clothes. When she found the effect of the stab the following day she panicked and threw the knife and stick away.

20. The defence closed its case.
21. Mr. Murunga representing the accused submitted that the state had failed to prove the charge of murder. He urged the court to find that the accused person did not know, and did not have the capacity and the specific time to know that her action would be fatal. Relying on *Republic vs Ismail Hussein Ibrahim* (2018) eKLR he submitted that the accused could only be guilty of Manslaughter. He proceeded to urge for a non-custodial sentence considering that she had been in custody since February 2019, and had minor children who needed her care and attention.
22. The prosecution in response through Ms Murunga submitted that the accused had malice aforethought, that accused instead of fleeing from the scene after seeing the knife fall from the deceased's clothes, she took the knife and stabbed him. In addition, the following day when she found he was dead, she took the knife and threw it away. That the deceased was drunk, that she was not in any danger, counsel submitted that the accused had bad blood and had been waiting for revenge. That what she did could not have been in self defence, but in revenge.
23. In his rejoinder, Mr. Murunga submitted that what the accused did was to free herself from what she believed was a grip by the deceased intended to kill her.
24. I have carefully considered the evidence on record, the submissions by counsel and the authorities cited. It is not denied by the accused that she indeed stabbed her husband. The evidence by the pathologist is that death was as a result of one stab wound, that penetrated to the cardiac muscle. Hence, the only two ingredients of murder have been established: the death of the deceased, and that the death was not through natural means but caused by the accused person. What remains is whether the prosecution has proved beyond a reasonable doubt the third ingredient, that the accused had, malice afterthought.
25. Section 206 of the *Penal Code* defines malice aforethought and states ;

“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 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.”
26. It is evident from the prosecution witness No. 1, the prosecution witness 2, the investigating officer, and the accused on oath, that the accused person and her husband had a relationship that was marked marred by violence as happened on the material night. It was the testimony of the accused that the



deceased had been beaten at his parents' home for breaking his father's car windows. This is an example of the deceased's violence while under the influence of alcohol.

27. These witnesses established that there were domestic violence and it is not disputed that at the time of the incident the accused was pregnant, and in addition, the accused was pregnant.
28. While we cannot have the deceased's side of the story from him the prosecution witnesses and the accused painted a picture of what happened that night. The accused and the deceased had differences, she was leaving when the deceased grabbed her. In the struggles, it turned out that he had taken a knife from on top of the cupboard and was hiding it in his clothes, and it fell from his clothes, and in the struggle that ensued she grabbed it first. The prosecution argues that she could have fled the scene at this point, but he was holding onto her shirt and she could not move. She describes the pertaining circumstances and it is evident that as the person who was at the place at that time, it is her who can describe how she felt and how real her feeling of being in danger was to her. She testified on oath that she felt that this time her husband was determined to kill her, accusing her of infidelity. Having heard her, listening and watching her demeanour, I had no reason not to believe her. She believed she was in danger. The accusation leveled at her whether true or not was dangerous and it is a fact that she was pregnant.
29. The fact that she threw the knife and the stick away was in shock and confusion, and despite that, she took herself to the police station, reported what she had done, and led the police to recover the knife and the stick, and actually told then what had happened. Her story was consistent and supported by the case for the prosecution where the Investigation officer told the court that upon her arrest she immediately confessed to the crime.
30. The issue of the alleged revenge came up in the submissions by the prosecution. No evidence was led to the effect that the accused was bearing a grudge against the deceased to warrant this deduction. The evidence that was presented by the prosecution showed that the two often fought. Their child told the court that sometimes the mother would beat the father and that his father was the stronger one whether drunk or sober. On this particular night there was no eye witness as to what transpired. Even the child could only testify to hearing a quarrel but he could not tell what it was about and whether it culminated into a fight or not. He however confirmed that that his parents would engage in fights.
31. The mother to accused confirmed this, that there were fights. That this was known by everyone to be the usual. It was on this basis that she formed the view that one of them was bound to kill the other. And without hesitation testified that her daughter is the one who had killed her husband. Section 3(2) of the *Protection Against Domestic Violence Act* no 2 of 2015 defines "Domestic violence", in relation to any person, to mean; violence against that person, or threat of violence or of imminent danger to that person, by any other person with whom that person is, or has been, in a domestic relationship.
32. These ingredients were there all the time brewing to what culminated as the death of the husband and the father in the family
33. Worse still, the children were exposed to this violence in one way or the other something that is prohibited by the same law at section 3 (3) where it says: Despite subsection (1)(f), a person psychologically abuses a child if that person—causes or allows the child to see or hear the physical, sexual, or psychological abuse of a person with whom the child has a domestic relationship; or (b) puts the child or allows the child to be put at risk of seeing or hearing the physical, sexual, or psychological abuse of a person with whom the child has a domestic relationship, but the person who suffers the abuse shall not be regarded as having caused or allowed the child to see or hear the abuse or as having put the child, or allowed the child to be put, at risk of seeing or hearing the abuse.



34. The scenario in this family and in many families in our country going through domestic violence and its aftermath points to a failure in the justice system to create both awareness of the existence of the law and the protections it offers and the available, visible accessible systems to support the same. Until that happens this ugly vicious cycle will continue to roar
35. The accused person killed the father to her six (6) children, who she was married to for a long time. What she did was unlawful but it was evidently not intended, and was the ultimate unfortunate outcome of domestic violence.
36. It is therefore my considered view that there was no malice aforethought, and without the element of malice afterthought the accused can only be guilty of Manslaughter Contrary to section 202 as read with section 205 of the [Penal Code](#).
37. I therefore substitute the charge of Murder Contrary to section 203 as read with 204 of the [Penal Code](#) with Manslaughter Contrary to section 202 as read with 205 of the same code and find the accused person guilty of the same and convict her accordingly.

SIGNED, DATED AND DELIVERED VIRTUALLY THIS 18TH DAY OF AUGUST, 2022.

Mumbua T. Matheka

Judge

In the presence of:

Court Assistant: Edna

For State: Notified, absent

For accused: Mr. Murunga

Accused: Present

