



**Republic/State v Murage (Criminal Case 24 of 2019)  
[2022] KEHC 14444 (KLR) (24 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14444 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CRIMINAL CASE 24 OF 2019  
MW MUIGAI, J  
OCTOBER 24, 2022**

**BETWEEN**

**REPUBLIC/STATE ..... PROSECUTION**

**AND**

**PERIS WANGECI MURAGE ..... ACCUSED**

**RULING**

**Background**

1. The accused person herein Peris Wangeci Murage is charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars being that the accused on July 17, 2019 at Mlolongo Estate in Athi River Sub-County, within Machakos County murdered Benson Musyoka Kioko.
2. The mental assessment report dated August 14, 2019 and filed in court on August 23, 2019 found the accused person Fit to Plead. The accused person herein took plea on September 18, 2019 whereof after the charges were read out to her in a language that she understood she pleaded not guilty. A plea of not guilty was entered on her behalf.
3. The accused person was granted bond/bail terms and the ODPP was to provide witness statements and documents to the defense /counsel and/or accused person before commencement of the hearing.
4. The accused person was represented by Mr Ogeto Advocate while the state was represented by Mr Machogu and later Mr Mwongera.
5. The hearing took off and the prosecution called a total of seven (7) witnesses.



## Evidence

6. Pw 1 Nzilani Mutisya Masika a resident of Mlolongo area of Athi River testified that the deceased herein had been his neighbour (living with his parents) for sometimes before moving out. On July 17, 2019, she was busy with her work when a young boy by the name Onyango came to enquire about the whereabouts of the mother of the deceased. She tried to call the mother but could not reach her. The boy informed her that the deceased had been stabbed and was lying unconscious. She proceeded to the scene and found the deceased lying outside the gate on a muddy ground facing upwards. He had injuries and was bleeding profusely. She then called the deceased's father who directed her to rush him to hospital but she informed him that the victim had already passed on. The father of the deceased David Kioko came to the scene. The body was collected by the Police. On July 22, 2019 she accompanied the deceased's father to Shalom Hospital mortuary to identify the body during the post mortem.
7. On cross-examination by Mr Ogeto for the accused person she stated that she was a tenant on the plot just like the deceased's parents. That she was a family friend to the deceased's family. She did not witness the incident. She saw the knife at the police station. She found a crowd at the scene and police officers were there as well. Members of public must have arrived earlier than the police. There was a large crowd forcing the police to shoot in the air so as to pick up the accused herein. accused was taken first by police who came back for the deceased afterwards. Members of public remained at the scene.
8. Pw2 Daniel Musembi Kioko a resident of Mlolongo testified that the deceased herein was his younger brother. The accused person was a neighbour to their mother Mary Ndunge. The deceased herein lived with their mother. On July 17, 2019 he was at home in the company of his mother and another brother named Mbithi. The deceased arrived late from work and Mbithi requested him to assist fix a certain computer. The two left. Later the deceased came back and quarrelled with the accused herein. The deceased was asking the accused why she had been insulting their mother. The accused assaulted the deceased on the leg. He assisted the deceased into the house. The accused shouted claiming that the deceased was a thief. She later stabbed him with a knife. He saw blood flowing from the accused's house towards the gate. He followed the blood trail which led him outside the gate where he found the deceased lying down. He had been stabbed on the chest. He then rushed to the Mlolongo police station to report. The Police officers arrived at the scene. The accused who had locked herself in her room was ordered to open the door. She handed over the knife with a black handle and bloodstained to the police. It was a kitchen knife. The body was collected by the police. He knew the accused as from November 2018. She was a person who was troublesome and harassing people in the plot. She was not in talking terms with the deceased as she used to allege that he was a thief. He had never disagreed with her.
9. On cross – examination by Mr Ogeto Pw.2 stated that he recorded his statement with the police. The house belonged to his parents and he do not reside with his parents. The accused used to allege that the deceased was a thief. He was at the scene when the incident took place and he saw the assault weapon. He did not see the accused stabbing the deceased but he heard the accused claiming that she had stabbed him. He heard accused's voice. accused was a troublesome woman at the plot. The deceased used to quarrel with the accused and they were not in good terms. Blood trail started from accused's house all the way to where the deceased lay. He did not witness the assault incident. There was no scientific evidence to confirm that the blood was of a human being. At the time the members of public had not arrived. He was the first person who saw the deceased as he lay dead outside the gate. He tried to resuscitate the deceased to no avail. Police came and picked up the accused before returning for the deceased. There was a large crowd near the body of the deceased and they had no gloves or gumboots.



10. Pw3 David Kioko Musyoka a resident of Mlolongo testified that the deceased herein was his son. He used to live with him within a rented house. accused was also one of the tenants and a neighbour. On July 17, 2019 around 12 noon he was at work when he received a call from one Benson Muema who alerted him that his son had been stabbed with a knife within the plot. Later another call from Nzilani Mutisya who was a family friend came and urged him to rush home and informed him that the deceased had already died. He proceeded to the scene and found a large crowd of people near the body of the deceased. The body was completely soaked in blood. Police collected the body and took it to Shalom hospital mortuary.
11. On July 22, 2019 he was at the mortuary in company of relatives to witness the postmortem. He identified the body and he saw a large stab wound on the left chest. The accused person herein was their neighbour and friend to his wife but they later developed some differences. He was not able to tell if deceased and accused had differences before.
12. On cross examination by Mr Ogeto he told the court that he could not tell if there were any differences between the deceased and accused person. He had not noticed any enmity between the two. He did not witness the incident. He saw the knife at the police station. The deceased had no formal employment and used to do odd jobs. None of the members of public wore gloves or gumboots at the scene. Body was taken by police as the public watched.
13. Pw4 Mary Ndunge Kioko a resident of Mlolongo testified that she lived in a rented house with her husband and children. There are other tenants at the plot. The deceased was her son. The accused person was also a tenant and a neighbour. On July 17, 2019, she received a message from one Mama Pamela who enquired from her what had taken place at the plot but she was unaware of the incident. She later managed to call another neighbour as well as her son John Kioko who informed her that the deceased had been killed. She lost consciousness and was assisted home whereby on arrival she found a group of neighbours. She came to learn that her son (the deceased) had been stabbed with a knife. The following day she visited Shalom mortuary and identified the body. It had a stab wound in the left side of the chest. accused was a neighbour at the plot and she had quarrelled with her in April 2019. When her children were at home during the school holidays they had informed her that the accused person had hurled insults and she confronted accused who told her off. The accused person had blamed deceased over some rubbish thrown outside the gate. She had tried to arbitrate but the accused again told her off and they agreed to keep it to themselves. The accused used to throw deceased's clothes from the clothes hanger to the ground for no apparent reason and she even requested the caretaker to call the landlord and elders to solve the matter where a meeting was to take place on July 17, 2019 but was overtaken by events of murder.
14. On cross –examination by Mr Ogeto she said that Daniel Kioko was her son and not the plot caretaker. Daniel Kioko informed her of what had transpired between accused and the deceased. It is normal for people to quarrel with each other. She was alerted of the incident and had to go to the mortuary to confirm that indeed her son had died. She only learnt of the quarrel that day of the incident. She did not witness the incident. She saw a photograph of the knife through her son's mobile phone.
15. Pw 5 Lucy Warugira Wachira a Government analyst from the Government chemist testified that she received exhibits for analysis namely (a) BMK1"- A knife, (b) BMK2"- bloodstained cotton wool and (c) BMK3"- blood in a syringe. After the analysis was carried out it was revealed that the knife (BMK1) and cotton wool (BMK 2) were moderately stained with blood of human origin. That the DNA profile generated from the bloodstains on the knife and on the cotton wool matched the DNA profile generated from the blood sample on BMK3" which was from the deceased.



16. Pw 6 No 67304 Sgt Ochieng Ombuor based at Mlolongo Police Station stated that she was the arresting officer. That on July 17, 2019 at around 11.40 am one Musembi Kioko came to lodge a report that his brother had been injured by a neighbour. Together with another colleague they rushed to the scene and on arrival found a large crowd of members of public who were baying for the blood of the assailant. The crowd was trying to flush out the accused person from a room in which she had locked herself into. The body of the deceased lay nearby. They managed to secure the safety of the accused from harm and after interrogating her at the scene, the accused showed the police officer the room where he discovered blood drops leading to where the deceased lay. He also recovered the knife which was the murder weapon which was then bloodstained. He used some cotton wool to soak the bloodstains in accused's house for preservation. The body was kept at Shalom Mortuary. On July 22, 2019 he accompanied the deceased's parents to the hospital for post mortem which was conducted by Dr Ndegwa. He also collected a blood sample in a syringe for DNA analysis and then prepared an exhibit Memo Form. He recorded statements of witnesses. He forwarded the exhibits to the Government chemist for analysis. The accused was later charged with the present offence.
17. On Cross – examination by Mr Arori holding brief for Mr Ogeto stated that there was a large crowd at the scene and hence the scene was not secured at all. She collected blood samples from the blood drops on the floor of accused's house and handed over the exhibits to the Government chemist for analysis.
18. Pw 7 Dr Peter Ndegwa working with the Ministry of health as a Pathologist testified that on July 22, 2019 at Athi River Shalom Community Hospital Mortuary he prepared/conducted a post mortem examination of Benson Musyoka Kioko. The body was identified by David Kioko Musyoka (deceased's father) and Kyalo Mwanza. Externally the deceased had sharp penetration stab wound on the left chest wall 4 cm from the midline and length 5cm breadth 2cm and 8cm through the left clerical – collarbone on the left side. Internally – perforated sack that surrounds the heart and the right ventricle was also perforated and blood. The stomach had been stabbed and there was leakage of stomach contents released to the heart. The 4<sup>th</sup> rib on the rib cage was fractured. He formed the opinion that the cause of death was due to exsanguination or haemorrhage due to chest injuries due to penetrating sharp force trauma consistent with assault.
19. The Prosecution closed its case on July 26, 2022 and the court directed the parties to file and serve their written submissions. Each party was granted 21 days to do so.

## **Written Submissions**

### **Prosecution Submissions Dated October 11, 2022**

20. The prosecution submitted that it availed seven (7) witnesses in support of its case and the following raised the following issues determination namely;-
  - a. Was the accused involved in the murder of the deceased?
  - b. Did the accused have malice?
  - c. Was the accused identified appropriately?
  - d. Was the cause of death as a result of the injuries inflicted?
21. On the issue of whether the accused was involved in the murder of the deceased the testimony of Pw2 places the accused person at the crime scene. The fact that Pw 2 witnessed the deceased and the accused having a confrontation before the murder clearly shows malice on the part of the accused. The blood



trails from the accused's house to the gate where the deceased body was discovered clearly shows that she indeed inflicted injury to the deceased by stabbing him on the chest.

22. On the issue of malice On whether the accused have malice section 206 of the *Penal Code* states that 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.

In the present case it is evident that the accused person had malice aforethought because she inflicted injury on the deceased by stabbing him with a knife.

23. On the issue of whether the accused was properly identified, from the evidence adduced both Pw2 and Pw6 saw her on the material date.

24. On the issue of whether the cause of death was a result of the injuries inflicted, the doctor testified that the death caused by exsanguination due to chest injury due to penetrating sharp force trauma consistent with assault.

25. Reliance was made in the case of *Ronald Nyaga Kiura v Republic* [2018] eKLR wherein paragraph 22 it is stated as follows:-

“It is important to note that at the close of prosecution, what is required in law at stage is for the trial court to satisfy itself that a prima facie has been made out against the accused person sufficient enough to put him on his defence pursuant to the provisions of section 211 of the Criminal Procedure Code. A prima facie case is established where the evidence tendered by the prosecution is sufficient on its own for a court to return a guilty verdict if no other explanation in rebutted is offered by an accused person.

26. Also in the case of *Ramanlal Bhat v Republic* [1957] EA 332 at 334 and 335 relied on by the state the court stated as follows:-

“It may not be easy to define what is meant by a “prima facie case” but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.”

27. Similarly in *R v Jagjivan M Patel & others* 1, TLR, 85 the court stated;-

“All the court has to decide at the close of evidence of the charge is whether a case is made out against the accused just sufficiently to require him to make a defence, it may be a strong case or it may be a weak case. The court is not required at this stage to apply its mind in deciding finally whether the evidence is worthy of credit or whether, if believed, it is weighty enough to prove the case conclusively, beyond reasonable doubt. A ruling that there is a case



to answer would be justified, in my opinion, in a border line case where the court, though not satisfied as to conclusiveness of the prosecution evidence, is yet of opinion that the case made out is one which on full consideration might possibly be thought sufficient to sustain a conviction.”

28. The prosecution finally submitted that by availing testimonies of seven witnesses as well as documentary evidence it has proved its case beyond reasonable doubt and the accused ought to be placed in his defence under section 306 (2) of the Criminal Code.

#### **accused Person’s Submission Dated 7<sup>th</sup> July, 2022**

29. The accused submitted that in accordance with the elements of the offence of murder under section 203 as read with section 204 of the Penal Code the state has to therefore prove that the accused not only caused the death of the deceased but also did so with malice aforethought. In the present case which is subject of these proceedings there is no direct evidence linking the accused to the injuries leading to the death of the deceased or the commission of the offence. The prosecution is relying on circumstantial evidence without any evidence of a single eye witness.
30. Identification evidence is defined as evidence that accused was or resembles a person who was present at or near place where the offence was committed, or an act connected with the offence. Reference is made to the case of Erick Odhiambo Okumu v Republic [2015] where it was held as follows:-
- i. The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;
  - ii. Those circumstances should be of a definite tendency un erringly pointing towards the guilt of the accused;
  - iii. The circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else”
31. In this case the accused person was charged with the offence of murder because she had quarrelled with the deceased before he died and not that any of the witness saw her commit the offence or that she was at the scene. There are no eye witnesses brought by the prosecution to show that they saw the accused actually stabbing the deceased. Although Pw6 stated that she took the blood using a cotton wool from the accused house, she confirmed that the scene was not secure due to crowd of people creating doubts on the prosecution’s case.

#### **Finding**

32. This matter/hearing commenced on September 18, 2019 before Hon DK Kemei – J who heard prosecution’s case – Pw1, Pw2, Pw3, Pw4, Pw5 and Pw6. This court took over the proceedings on October 6, 2021 when the court sought proceedings to be typed and availed to the parties/Counsel before directions.
33. On December 15, 2021 the accused person confirmed receipt of typed proceedings. The provisions of section 200 – 201 CPC were explained to the accused person by the court assistant Geoffrey and the accused stated that the matter proceeds from where it had stopped.
34. On March 23, 2022 the Advocate on record Mr Ogeto withdrew and the accused’ advocate Mr LangaLanga came on record and typed proceedings were to be availed. On May 18, 2022, the proceedings were typed and the defense received copies and hearing scheduled on July 26, 2022.



35. On July 26, 2022, Dr Peter Muriuki Ndegwa testified and produced Exhibit 1 – Post Mortem.
36. The prosecution closed their case and the court directed parties to file written submissions.

### **Disposition**

1. Upon this court's consideration of the totality of the evidence adduced and on record, the evidence discloses commission of the criminal offence of murder c/s 203 of the [Penal Code](#).
2. The evidence of Pw1 & Pw2 coupled with the formal witnesses of Pw5, Pw6 & Pw7 confirms that the deceased died from an unlawful act and places the accused person at the scene and time of incident and the circumstances outlined target the accused person is sufficient to warrant the accused person to be placed on her defense.
3. The law requires that the accused exercises the legal right as prescribed under sections 306 [CPC](#).

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 24<sup>TH</sup> DAY OF OCTOBER, 2022  
(VIRTUAL/PHYSICAL CONFERENCE)**

**M.W MUIGAI**

**JUDGE**

**IN THE PRESENCE OF:**

Peris Wangeci Murage – accused Person

Mr Langalanga - For the accused Person

Mr Mwongera - For the State

Patrick/geoffrey - court Assistant(s)

Court: Further Mention for Direction on 8/11/2022.

**M.W MUIGAI**

**JUDGE**

