



**Republic v Merama (Criminal Case E003 of 2021)
[2022] KEHC 15419 (KLR) (17 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 15419 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CRIMINAL CASE E003 OF 2021
RPV WENDOH, J
NOVEMBER 17, 2022**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOHN MUTURI MERAMA ACCUSED

JUDGMENT

1. The accused in this case is John Muturi Merama. He faces a charge of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. He is alleged to have murdered, Susana Gati Merama on 2/2/2021 at Masangora Sub Location Gekeharaka in Kuria West Sub County. The deceased was a sister to the accused.
2. The prosecution called three witnesses in support of their case while accused gave unsworn evidence in his defence and did not call any other witness.
3. The Key witness in this case are the accused's parents PW2 Alice Merama Robi and his father whose statement to police was produced in evidence by the investigation officer PW3 because the accused's father, Thomas Robi is said to be incapacitated due to ill health and was not able to attend court.
4. PW2 recalled that on 2/2/2021 about 2:00 p.m. She was lying outside her house as she was feeling unwell when her daughter, Susana Merama, the deceased, came from school where she worked. Her husband Thomas Merama was in the house. After a short while, her son, the accused, arrived and started to interrogate the deceased as to why she had not prepared lunch. PW2 informed Susan to cook the meat that had been brought by the father, and make ugali; that the accused continued to demand why the deceased had not cooked lunch in time; that the accused then wanted the deceased to give him the meat on the sufuria when it was still uncooked. When the deceased tried to excuse herself to get a plate to serve him with meat, the accused stood in the door way and insisted on being served on the sufuria; that in the process of Susana getting out of the kitchen, the accused who had a short metal rod



in his hand hit the deceased with it on the back and she fell on her stomach. She then turned and looked up. PW2 said that she got shocked and lost consciousness for some time and when she came back to, she found accused strangling the deceased. PW2 said that once the deceased was hit on her back, she was not able to stand up again; that accused later then served himself with meat, ate and when walking around the home, her husband went and called one Simeon Teketeke to assist with the deceased but accused saw them and ran towards them and they retreated as the accused was threatening to kill the father too. PW2 told the court that the accused had assaulted her before and that people feared him because of his violence and that nobody was willing to come to their aid for fear of Accused.

5. Later, her husband got a motor cycle to take the deceased to hospital but she could not sit on a motor cycle. They then got a vehicle about 5:00p.m and took the deceased to hospital at Kehancha but she was transferred to Migori; that the deceased's neck could not remain straight up. The deceased ended up being taken to Eldoret Hospital where she died on 10/2/2021. PW2 said that her husband got a shock when the deceased died and got a stroke. PW2 further told the court that the accused used to be a normal person, went to polytechnic, worked in a bank in Tanzania; that he drinks alcohol and smokes bhang and becomes violent and that he is a terror. PW2 said that at one time when in prison at Kehancha, the accused did KCPE and got 350 points and was released; that he is a very clever person. She denied that accused has any mental problems.
6. In the statement (PEXNO 2) of Thomas Merama which was produced by the investigating officer, PW3 Tonui Gilbert, Thomas recalled having been home on 2/2/2021 watching T.V. about 2:00p.m when he heard Susana (deceased) shouting that she would tell her father. He went outside to find out what was happening. He found the deceased lying down and the accused was sitting on her strangling her. He pleaded with accused to leave the deceased but he refused. Thomas then sought help from one Simeon Teketeke but their pleas fell on deaf ears and accused threatened to kill him and he ran away; that the accused left after an alarm had been sent out and Thomas got a motor cycle rider to take the deceased to hospital but she could not sit on a motor bicycle. Later, they got a motor vehicle which took her to hospital and she later died in an Eldoret hospital.
7. The Postmortem report was produced by PW1, Dr. Mark Otieno Oduor of Akidiva Hospital. The postmortem was performed by Dr. Rodney Buchumbuka and the said Doctor hailed from Uganda. He had worked together with PW1 between 2020 and 2002 but he absconded duty. The Doctor found that the deceased had sustained a back injury of about 1 x 1 cm in the interscapular region; there was laceration under the injury and there was spinal injury at C5, there were dark spots all over the lung lobes which suggested exposure to smoke. The doctor formed the opinion that the cause of death was suffocation in view of the circumferential neck marks; that the injury to the neck caused respiratory failure or breathing.
8. The investigating officer PW3 was informed of the case by the DCIO. He learnt of the murder and by then the suspect had been arrested and was at Masangira police station. PW3 collected accused from there, recorded witness statements and on 16/2/2020, the body was identified by the father Thomas Merama. PW3 said that at the time of arrest, accused was sober, spoke English and PW3 recorded a statement from him. He was confirmed to be fit to plead to the charge when examined by the psychiatrist.
9. When called upon to defend himself, the accused opted to make an unsworn statement. He denied murdering his sister save that he found her getting out of the kitchen with a cooking stick and knife; that she blocked him from entering his cubical; that he pushed her out of the way. He then asked for his lunch and she started to fight with him and the father came out to intervene. He went to his cubical and she went to hers. Later, he found she had cooked took his share and ate.



10. I have considered the evidence tendered by the prosecution and the defence. Under Section 107 of the Evidence Act, this being a criminal case, the burden of proof wholly rests on the prosecution to prove its case beyond any reasonable doubt. The court in considering the term “beyond reasonable doubt” in Stephen Nguli Mulili vs. Republic (2014) eKLR stated as follows:

“It is not in doubt that the burden of proof lies with the prosecution. The *locus classicus* on this is the case of *DPP vs. Woolmington* (1935) UK HL 1 where the court eloquently stated that:-

The “golden thread’ in the ‘web’ of English Common Law’ is that it is the duty of the prosecution to prove its case. The Kenyan Courts have upheld this position in numerous cases.”

11. In *Miller vs. Minister of Pensions* (1947) 2 ALL ER 372 Lord Denning stated with regard to the degree of proof beyond reasonable doubt:-

“That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to defeat the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course it is possible, but not in the least probable doubt, but nothing short of that will suffice.”

12. In *Bakare vs State* (1987) 1MWLL 579, the Supreme court of Nigeria on proof of beyond reasonable doubt said:-

“Proof beyond reasonable doubt means just what it says. It does not admit of plausible possibilities but does admit of a high degree of cogency consistent with an equally high degree of probability.

13. Applying the above principles to this case, this being a murder case; the prosecution has to prove beyond reasonable doubt the following ingredients.

1. Proof of death;
2. Proof that the accused caused the unlawful act or omission that caused the death;
3. Proof that the accused had malice after thought.

Proof of Death

14. As regards the death of the deceased, PW2 testified that the Deceased was seriously injured that she could not sit on a motor cycle as her neck could not hold up; that she died while undergoing treatment in Eldoret and they buried her. PW3, the investigating officer was present when Doctor Rodney Buchumbuku performed post mortem after the body was identified by Joseph Muturi and John Robi. PW2 said that Joseph Muturi is her brother. The Doctor found the cause of death to be suffocation, in view of the circumferential neck marks and injury to C5 that the injury to the neck caused respiratory failure. These injuries were consistent with PW2’s evidence that the deceased was strangled. The statement admitted in evidence made by deceased’s father Francis also confirmed that the accused strangled the deceased. No doubt death was proved.

15. Whether the accused caused the unlawful or omission act that resulted in the death.



16. The only witness to the incident is PW2, the deceased's mother. She said that she was lying outside the house and she witnessed how it all started with accused demanding food from the deceased and that the deceased was late in cooking. PW2 saw the accused hit the deceased on her back with a metal rod that he always carried around and she fell. According to PW2, the deceased never got up from where she fell; that thereafter, the accused started strangling the deceased. The father of the deceased whose statement was produced also confirmed finding the accused strangling the deceased as she lay on the ground. Though the accused denied committing the murder, he admitted to being at the scene. In his unsworn defence, he claimed that he fought with accused, but this comes as an afterthought in his defence. According to PW2, accused had been terrorizing them and that is what he did to his sister that day demanding lunch. I do believe that PW2, accused's own mother, told the court the whole truth. There is no good reason why she would lie against accused. PW2 is herself wondering what happened to her son who has changed so much and has become a terror. PW2 blamed accused's behaviour on accused's consumption of alcohol and drugs. Upon arrest, accused was found fit to plead and therefore the alcohol and drugs have not affected his cognitive functions. This incident took place in broad daylight. In fact, the accused placed himself at the scene. I do not believe that there was a fight or that he was acting in self defence but he is the one who attacked and fatally injured the deceased.

Proof of malice afterthought

Section 206 of the *Penal Code* defines malice aforethought as:

- “206 malice aforethought shall be deemed to be established by evidence proving anyone 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 same person, whether the person is the person actually killed or not although such knowledge is accompanied by indifference. Whether death or grievously bodily harm is caused.
 - c) an intent to commit a felony;
 - d) an intention by the act or omission facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony”

17. Section 206 was considered in the case of *Tubere s/o Ochen vs. Republic* (1945) 12 EACA 63 where the court stated this:-

The duty of the court in determining whether malice aforethought has been established is to consider the nature of the weapon used, the manner in which it is used, the part of the body injured, the conduct of the accused before, during and after the attack”.

18. In the instant case, PW1 first saw accused hit the deceased on her back with a metal rod. I believe it is the probable weapon that fractured her C5 as established by the Doctor.
19. The Doctor's (PW1) evidence that the neck had circumferential marks does also corroborate PW2's evidence that the accused strangled the deceased. These were very deliberate actions, intended to cause



grievous harm to the deceased and which the accused succeeded in accomplishing. I find that the accused possessed malice aforethought as the injuries did result in death.

20. After examining the prosecution evidence in its totality, I am satisfied that the prosecution has proved its case to the required standard of beyond reasonable doubt, that the accused attacked the deceased with a metal rod, hit her on the back, she fell down and he went ahead to strangle her leaving her neck and C5 fractured. Accused's defence is hollow, a mere denial and I dismiss it as such. I find the accused guilty for the offence of murder contrary to Section 203 of the [Penal Code](#) and convict him accordingly.

DATED, DELIVERED AND SIGNED AT MIGORI THIS 17TH DAY OF NOVEMBER, 2022.

R. WENDOH

JUDGE

Judgment delivered in the presence of

Mr. Mulama, for the State.

Mr. Mulama holding brief for Mr. Jura for Accused person.

Accused present

Evelyne Nyauke – Court Assistant

