



**Director of Public Prosecution v Ameka (Criminal Case 41 of 2017)
[2022] KEHC 16937 (KLR) (23 December 2022) (Judgment)**

Neutral citation: [2022] KEHC 16937 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE 41 OF 2017
WM MUSYOKA, J
DECEMBER 23, 2022**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTION REPUBLIC

AND

WILLIAM AMEKA ACCUSED

JUDGMENT

1. William Ameka is charged with murder, contrary to section 203, as read with section 204, of the [Penal Code](#), cap 63, laws of Kenya. Particulars of the offence allege that on the 10th day of October 2017, at Kipsinai village, Benja Location, in Hamisi Sub-County, within Vihiga County, he murdered Patrick Munghasia, hereinafter referred to as the deceased. He pleaded not guilty to the charge on November 7, 2017. The hearing of the case for the prosecution commenced on October 23, 2019. 8 witnesses testified.
2. The first on the stand was Margaret Minayo Ameka, who testified as PW1. She stated that the accused, who was her husband, came home on 10th October 2017, at 6.00 pm, drunk, and went straight to the house of the deceased, who was her son. She heard the 2 quarrel, with the accused telling the deceased not to eat, as he was not working and thereby contributing to the domestic resources. She went there, and found the 2 outside the house, fighting. The deceased had overpowered the accused, and was sitting on top of him. She separated them, whereupon the deceased retreated into his house. The accused went into his own house, and came out with a knife, and went straight to the house of the deceased, and entered the house. She did not hear any commotion, but the accused emerged from the house of the deceased, saying that he had finished his work, and that whoever wanted to see that work could see it. He then pulled out the body of the deceased and brought it out of the house. He began stepping on the body, telling it to wake up, if it was man enough. The witness then ran to the nearest police station, and came back with 2 police officers. They asked the accused to drop his knife, but he challenged them, asking them who they were to tell him to do so. One of the officers hit his hand, and he dropped the



- knife, and the police stepped on it. The police then arrested him, and tied him up, and removed him to Banja Police Station. Officers from Serem Police Station came to the scene, took pictures of the body and removed the body to Mbale Mortuary. She stated that the accused was always quarrelling with the deceased over food, and every time he gave food to the deceased, the accused would feel bad. During cross-examination, she testified that she did not scream as she was afraid that he would kill her. She said that there were other people within the compound, who also witnessed the incident, but none of them screamed or raised alarm. She said that the accused also used to pick quarrels with her, whenever he came home drunk.
3. Lugina Muhinda testified as PW2. He was a son of the accused and PW1, and a brother of the deceased. He got information on October 10, 2017, while at a function, at about 6.00 pm, to effect that the accused was fighting with the deceased. He rushed home. Before he got home, he got another call, informing him that the accused had entered the house of the deceased, while armed with a knife, and he was urged to hurry. When he got to the compound, he found the deceased standing outside the house of the deceased, holding a knife, saying, “Huyu nimemchinja.” He noted that the clothes of the accused were blood-stained, and there was blood on his hands. He saw the deceased lying outside on his back, with blood flowing from his chest, and PW1 informed him that he was doing badly. The witness then proposed that they call the police, which they did, and police officers came to the scene. The police found the accused still holding onto the knife, and they arrested him, and took the knife from him. He was taken to Banja Police Post. Regular police officers came on the scene, and took the body to the mortuary. He stated that historically the accused did not like the deceased. During cross-examination, he stated that by the time he got to the compound, the deceased was already dead. He found the other members of the household gathered around the house of the deceased. He said that PW1 rushed to the police after the body of the deceased was pulled out of the house by the accused. He said that the deed had already been done by the time he got home. He stated that there were problems between his parents since his childhood.
 4. Mary Vuguzza testified as PW3. She was a daughter-in-law of PW1 and the accused, married to their son, PW2. She testified that she was at home on October 10, 2017. At about 6.00 pm, she saw persons within the compound rush towards the house of the deceased. She also stopped what she was doing and also ran there. She found the accused pushing the door to the house of the deceased from the outside, while the deceased was pushing the door from the inside. The accused then left, and the deceased opened the door, and wanted to go out, but the accused came back, and the deceased went back inside the house. The accused pushed the door, and followed the deceased inside. He came out after a few minutes, and said that he had killed the deceased. He had a knife. His clothes, hands and the knife had blood. The accused then got into the house again, and came out pulling the body of the deceased. He began stepping on the body, hitting it with the knife, telling it to get up, to quarrel with his father. PW1 then left, and came back with police officers. The police found the accused still holding the knife, and arrested him. During cross-examination, she stated that she witnessed the altercation at the door. No one screamed, as they were all shocked. She said that she did not witness the accused stab the deceased, but she saw the weapon. The initial report was made by PW1, to Banja Administration Police Post. The AP officers came and arrested the accused, but left the body at the scene. They took the knife with them. She further said that the accused also shouted at PW1, telling her that he would kill her.
 5. Polycarp Kweyu Lutta, followed as PW4. He was an analyst from the Government Chemist. He testified that on November 16, 2017, he received samples from Police Constable Richard Ng’eno, of the Directorate of Criminal Investigations, Hamisi, for analysis. The samples comprised of blood from the deceased, a blood-stained shirt from the accused, and a bloodstained machete. The request from him was to confirm whether the blood stains on the shirt and the machete matched that of the deceased. He did the analysis and found that the blood on the shirt and machete was of human origin, and matched



- the deoxyribonucleic acid (DNA) profile of the deceased. During cross-examination, he said that the machete did not have blood of the accused, but that of the deceased, on the blade, but not on the handle. He also established that the blood on the shirt was from the deceased. He produced a report to support his findings.
6. Dr Masika Collins Were testified as PW5. He was the pathologist who conducted the autopsy on the body of the deceased. The body had stab wounds on the chest and abdomen. Internally, both lungs had collapsed, and there was intracardial haemorrhage or bleeding, and the intestines were ruptured. He formed opinion that the cause of death was intracardial arrest, due to stab wound. During cross-examination, he stated that it was the stab wound on the chest that caused the death. He confirmed that he harvested samples, which he handed over to the police to submit to the Government Chemist.
 7. Police Corporal Hassan Wasike, service number 87082693, testified as PW6. He was in charge of the patrol base at Banja. He testified that PW1 came to the patrol base on October 10, 2017, at about 6.00 PM, and reported that the deceased had come home, and began a dispute with the deceased, after which he stabbed the deceased with a machete, and the deceased had fallen down. She escorted them to the scene, where they found the accused holding the machete, and the deceased lying on the ground. He confirmed that the deceased was dead. They arrested the accused, and escorted him to the patrol base, for his safety, for a crowd had already gathered at the scene. He then called the Officer Commanding Station (OCS), Serem Police Station, for reinforcement, and to collect the body. A team came from Serem Police Station, which collected the body, and rearrested the accused. During cross-examination, he said that the machete had blood on the blade. He noted a stab wound on the body of the deceased, on the ribs.
 8. PW7 was Henry Nagide Mugasia. He identified the body of the deceased, for post mortem purposes.
 9. PW8 was Inspector of Police John Too, service number 287091. He was the investigating officer. He testified that he was notified of the incident by the OCS, Serem Police Station. He, the OCS and other officers proceeded to Banja Police Post, where they found a crowd baying for the blood of the accused. They rearrested the accused, and put him in a police vehicle and whisked him away, amid stoning of their vehicle by the crowd. They were also received the weapon, from PW6. They commenced investigations, which took 7 days. They visited the scene, interviewed witnesses, recorded statements, took photographs, collected exhibits and samples, and submitted the samples for analysis. He compiled a report, and recommended a murder charge. He stated that PW1 informed him that the deceased was sober, as he had been with her at home. He noted that the deceased was stabbed in the stomach, just below the ribs, from the front; he did not see possibility of the accused being provoked nor acting in self-defence.
 10. I ruled, on February 25, 2022, that the accused person had a case to answer, and I put him on his defence. The defence hearing happened on June 29, 2022. He testified that he did not kill his son, the deceased. He said that when he left home all was okay, but when he came back he found a crowd at about 7.00 pm. He found police officers on site, who arrested him, and took him to Banja Police Post, and that he was rearrested from there by officers from Serem Police Station. He said that the blood on his body was his, as officers at Serem Police Station assaulted him, on his fingers, using pliers. He said that by the time he was arrested he did not know whether the deceased had died. He said that he did not get a chance to know what happened or who killed the deceased, as he spent the whole day at Banja. He said that he had no dispute with any of his children, and that he had educated all of them well. He said that the deceased used to take alcohol, and was mentally retarded. He asserted that he, the accused, did not drink.



11. Although the accused, through his advocate, Mr Otsyeno, was given time to file written submissions, none were filed in the end.
12. The elements of the offence of murder, as set out in section 203 of the Penal Code, are the fact of death, the cause of the death, the role of the accused person in the cause of the death, and the fact that the death is caused by the accused with malice aforethought.
13. From the material before me there is concrete proof that the deceased in fact died. His mother, PW1, and his sister-in-law, PW3, were present when he was stabbed, and attested to the fact that he died on the spot. His brother, PW2, came to the scene minutes later, and saw his dead body. The pathologist, PW5, conducted a post mortem on his body, after it was identified by the police and a relative. PW6, was the first police officer at the scene, he saw the body. PW7 was the relative who identified the body to PW5, for post mortem purposes. The cause of death is also not in dispute, it was said to be intracardial haemorrhage, secondary to stab wound. What should be in contention is who caused the death, and whether he had malice aforethought. It is contentious, as the accused denies the killing.
14. So, who was responsible for the death of the deceased? The material on record is fairly straightforward on who fatally injured the deceased. PW1 narrated how the accused came home and went straight for the deceased. They fought. She separated them. The accused retreated to his house, where he armed himself with a knife/machete, and went to the house of the deceased, where another confrontation happened, and he emerged from the house, saying that he had killed, and he went into the house and pulled the body of the deceased out. Her testimony was corroborated by PW3. She was at the scene. She saw the accused pushing the door to the house of the deceased, in an effort to get in. The accused then went to his house, armed himself with a knife/machete, got into the house of the deceased, he came out to say he had killed, and then he pulled out the body. PW2 came to the scene shortly after that. He found the accused standing outside, with a knife/machete dripping with blood, with the deceased lying there. PW6 came to the scene, after a report by PW1, and found the body, and the accused holding the bloody knife still in his hand, disarmed him, and arrested him. None of the witnesses saw him stab the deceased, as the assault happened in the house of the deceased, while PW1 and PW3 were outside it. There was no evidence that there was another person inside that house apart from the accused and the deceased. The accused himself got into the house with a knife/machete, and came out holding it with blood on its blade, and announced that he had killed. As if to prove the fact, he pulled the body of the deceased from the house, and began to rebuke or mock it, and to physically abuse it, by stepping on it and hitting it with the knife/machete. PW4 analysed the blood stains on the knife/machete that was retrieved from the accused and the shirt the accused was wearing when he was arrested by the police, and he found that the blood on both the knife/machete and the shirt worn by the accused matched that of the deceased. I am persuaded that there is overwhelming evidence, that the accused caused the death of the deceased.
15. Did he do so with malice aforethought? Malice aforethought is defined in section 206 of the [Penal Code](#). Section 206 states:

“Malice aforethought

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;
- (a) 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.”

16. Under section 206, malice aforethought is to be inferred from facts that suggest an intent to cause death or to cause grievous harm, or the knowledge that the act causing death could cause death or grievous harm, or an intent to commit a felony, or an intention to facilitate escape from custody of a person and in the process a death is caused.
17. The accused attacked the deceased in his house with a knife/machete. He was the assailant, for the deceased was in his house, when the accused came home. He made straight to the house of the deceased, where he picked a fight. After PW1 separated them, the deceased retreated into his house, while the accused went into his own house and armed himself with a weapon, the knife/machete. He came back, got into the house of the deceased, and stabbed him. The stabs were into the chest and abdomen, where vital body organs are housed. No doubt, the intention was to kill. Indeed, that intention was verbalised by the accused after the fact, when he announced to those present that he had finished him, then the pulling or dragging of the body from the house, and the taunting and mocking of the body, and its physical abuse. Clearly, there was malice aforethought.
18. There was some evidence that the accused was drunk, which could be a defence, that could mitigate the malice. But then no evidence was led to demonstrate that the accused was so intoxicated to the extent of losing control of his faculties. There was no provocation whatsoever by the deceased. The deceased was not the aggressor, so the issue of the accused acting in self-defence or defence of another does not arise. In any case, he has not raised any of those defences.
19. In view of everything stated above, I do find the accused herein guilty of the offence of murder, of Patrick Munghasia, contrary to section 203 of the *Penal Code*, as read with section 204 thereof, and I convict him accordingly, under section 322 of the *Criminal Procedure Code*, cap 75, Laws of Kenya. For the purpose of sentencing, I hereby direct the Vihiga County Director of Probation and Aftercare Services to assess the antecedents of the accused person, and to get the views of the family of the deceased and the community, and to file a report thereon within thirty (30) days.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 23RD DAY OF DECEMBER, 2022.

W MUSYOKA

JUDGE

Mr Erick Zalo, Court Assistant.

Ms Kagai, instructed by the Director of Public Prosecutions, for the Republic.

Mr Otsyeno, advocate for the accused person.

