



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CRIMINAL CASE NO. 53 OF 2014**

**REPUBLIC.....ROSECUTOR**

**-VERSUS-**

**JASONI KAICHI LIKURA.....ACCUSED**

**JUDGMENT**

**1. JASONI KAICHI LIKURA** ('the accused') herein has been charged with murder contrary to **Section 203 as read with Section 204 of the Penal Code CAP 63 of the Laws of Kenya**. The particulars of the offence are that on the 23<sup>rd</sup> day of July, 2013 at Ntiba village, Ntiba Sub – location in Tigania West District within Meru County murdered TABITHA NKATHA M'MUTIA M'LIKURA ("the deceased"). The prosecution called five (5) witnesses to establish its case.

**2. PW1 Jackline Gatwiri** daughter to the deceased told the court that on 23/07/2013 she was at home with her mother. She was 13 years of age at that time. At about 7.00PM her uncle, the accused, came and told the deceased that his brother has died. She left them outside and went inside the house to take some clothes. She then came out and found that the accused had cut the deceased with a *panga*; it was dripping with blood. She screamed and the accused disappeared. Her two brothers Robert Thurania and George Mutea came to the scene and the deceased told them that it was the accused who cut her. She took her school dress and wrapped around her neck. Other villagers came and helped her brothers to take the deceased to hospital. The following day she was informed that her mother had died.

**3. PW2 George Mutea** son of the deceased testified that on the material day his mother had sent him to buy paraffin. When they were near their home they heard screams from **PW1** saying '*Kaicii amekatakata mama*'. He and his brother Robert Thurania met the accused at the on his way out. He tried to cut Thurania who fell down but when he saw him behind he ran away. When they reached to the house they found their mother was bleeding and **PW1** attending to her. They screamed and attracted the attention of their neighbors. They took her to hospital but she died on the way. They then reported the matter to the police.

**4. PW3 Robert Thurania** son of the deceased testified that on the material day at about 7.30 PM his mother had sent them for paraffin with **PW2**. On their way back as they were about to reach home they had screams from **PW1** '*mama amekatakata na Kaicii*'. They then met with the accused at the gate who had a torch and a blood stained *panga*. He shone the torch on his eyes which caused him to fall down. He wanted to cut him with the *panga* but when he saw **PW2** he disappeared. When they entered the homestead they found their mother on the ground with a cut on the head, face and left arm. Their screams drew the attention of their neighbors who came to assist. They got a vehicle and took the deceased to hospital but was pronounced dead on arrival.

**5. PW4 M'Mutea M'Rikuria Imunya** husband of the deceased told the court that 23/7/2014 he received a call from Meshack Mailaungi. He set out for home and met his children together with other people with whom he accompanied the deceased to hospital. On arrival the doctors proclaimed her death. He saw her body which had injuries on the head, neck and left hand. He was informed that it was the accused who injured the deceased. The accused was accusing his wife of being a witch.

**6. PW5 Dr.Samuel Mutegi** who conducted the post-mortem produced the report (*P Exh. 1*). He stated that externally on the body, the left hand had been amputated at the wrist joint; there was a deep wound on the right side of the skull and also a deep cut on the lower jaw. Internally, there was fracture of the left rib, left parietal bone had a compound fracture and there was subdural hematoma on right parietal of the brain. He concluded that the cause of death was severe head injury secondary to trauma.

**7. PW6 No. 112358 PC Festus Ngeno** testified on behalf of IO PC Mutie Samuel. According to the police records, the husband of the deceased reported the matter to the police on 24/07/2014 and PC Mutie was instructed to investigate the death of the deceased. He visited the scene where he found blood stains and recorded statements from the witnesses. The post mortem was conducted at Miathene Hospital where PC Mutie and relatives of the deceased identified the body. Upon arrest, the accused was found in possession of a *panga* which was blood stained. The IO also recovered the maroon dress. He submitted the dress, *panga* and sample of the blood of deceased to government chemist at Nairobi for testing. **PW6** produced PC Mutes's statement (*P Exh. 2*), *panga* (*P Exh. 3*), maroon dress (*P Exh. 4*), exhibit memo (*P Exh. 5a*) and report by government analyst (*P Exh. 5B*). The motive of attacking the deceased was that she was a witch; bewitched and killed his

brother.

8. At the close of the prosecution's case that accused gave a sworn testimony. **DW1 Jackson Kaicii Likura** told the court that he has been framed. That on 23/07/2014 at 8.00PM he cannot remember what happened as he was at his father's home who was ill. He slept there and woke up the next day early in the morning and went to Matiru. He watered onions and slept at Itatene. He finished and wanted to go to check on his father and his status but he was arrested before reaching his father's home. He affirmed that he had no problem with the deceased as well as her family.

### **Elements of murder**

9. According to **Section 203 of the Penal Code**:-

**“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”**

Thus, for a conviction of murder to ensue, the prosecution must prove beyond reasonable doubt four ingredients, namely:

**1. The fact of the death of the deceased**

**2. The cause of such death**

**3. Proof that the deceased met his death as a result of an unlawful act or omission on the part of the accused persons, and lastly**

**4. Proof that the said unlawful act or omission was committed with malice aforethought**

10. The first and second elements are inextricable and shall be dealt with together. These are; the fact and cause of death the deceased. According to **PW5** who conducted the post mortem, the deceased's body was identified by **PW3, PW4** and Joanina Murithi. He examined the body and carried out a post-mortem thereof. He formed the opinion the opinion that the cause of death was severe head injury secondary to trauma. This is consistent with the injuries she sustained and as were narrated by the other witnesses. Accordingly, I am satisfied that the fact and cause of death of the deceased has been proved.

11. Did the deceased meet his death as a result of an unlawful act or omission on the part of the accused person? This is called *actus reus*. In this respect, **PW1** told the court that the accused came to their home on the material date. She left the accused and deceased outside as she went inside the house to take clothes. When she heard cow's footsteps she went outside only to find the accused had cut the deceased with a *panga*. The *panga* was dripping with blood. **PW1** screamed and the accused disappeared. **PW2** and **PW3** testified that they were coming home when they met with the accused at the gate of their home. They were able to identify him using his torch as well as the moonlight. According to them, the accused attempted to cut **PW3** but when he saw **PW2** behind him he ran away. The two testified that when they got to the deceased and found her lying on the ground and she told them that it was the accused who cut her. According to **PW6** the blood stained *panga* was found at the accused's home. Samples were taken from the *panga* and dress. And according to the government analyst's report the DNA profile generated from the *panga* and dress matched the DNA profile generated from the blood sample indicated to be of the deceased.

12. When put on his defence the accused stated that he was at his father's home. However, the evidence by **PW1, PW2** and **PW3** place the accused at the scene of crime on the material day. The evidence is cogent and completely dislodges the alibi. In addition, the *panga* which was recovered from the house of the accused is certainly the killer weapon; and this was confirmed by the scientific analysis of DNA provided. Science is known to resolve cases resoundingly and with almost certainty. These pieces of evidence lead to no other conclusion except that it is the accused who cut the deceased. Therefore, the prosecution proved beyond reasonable doubt that the deceased met his death as a result of an unlawful act on the part of the accused.

13. Did the accused have the necessary malice aforethought? under **Section 206 of the Penal Code**:-

**“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) .....”**

14. **PW1** testified that the accused came to their home to inform the deceased of his brother's death. According to **PW3, PW4** and **PW6** the accused alleged that the deceased was a witch and had bewitched his brother who died. In addition, type of injuries inflicted, the weapon used (a *panga*) to inflict injuries as well as the fact that the deceased was unarmed show that his intention was to occasion grievous harm to

and or cause death of the deceased. Among the parts of the body of the deceased that were injured by the accused was the head which is considered as one of the sensitive parts of the body. By cutting her on the head shows his intent to occasion grievous harm or death.

15. In light thereof, the prosecution proved beyond reasonable doubt that, with malice aforethought, the accused unlawfully caused the death of the deceased.

16. Consequently, I find the accused Jasoni Kaicii Likura guilty of the murder of Tabitha Nkatha M'Mutia M'Likur contrary to **Section 203 as read with Section 204 of the Penal Code**. He is accordingly convicted for the offence of murder. Right of appeal 14 days. It is so ordered.

**Dated, signed and delivered at Meru this 30<sup>TH</sup> day of June 2020**

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**F. GIKONYO**

**JUDGE**

**Representation**

1. Nyenyire for accused
2. M/s Nandwa for state