



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

CRIMINAL CASE NO. 22 OF 2016

REPUBLIC.....PROSECUTION

VERSUS

RIZIKI KARISA YERI.....ACCUSED

CORAM: Hon. Justice R. Nyakundi

Ms. Sombo for the state

Mr. Ogeto for the accused person

JUDGMENT

On 3.12.2016 at Kasanga village it is alleged that the accused person **Riziki Karisa Yeri** murdered **Kadzo Charo Chenje** contrary to Section 203 of the Penal Code. He pleaded not guilty to the charge. The state was represented by **Ms. Sombo** whilst **Mr. Ogeto** represented the accused.

The evidence at the trial

The facts as shown in the brief particulars of the charge were further expounded by the witnesses as follows:

PW1 – Raeli Riziki Karisa the daughter to the deceased and the accused gave evidence in respect of the sequence of events of 3.12.2016. It happened that the accused instructed the deceased to go and cultivate the land while he goes to tap wine. Apparently from PW1 testimony, the deceased did not manage to go and farm as instructed and when the accused came back it triggered a conflict. Further in PW1 evidence, the conflict and exchange of words between the accused and the deceased escalated into a violent assault. It all started with the accused cutting the deceased at the heart and stomach, in and in return the accused managed to get hold of the knife to self-inflict harm upon himself. The screams she raised with other siblings led to the neighbours responding to the distress call. The deceased who passed on instantly was placed on the chair by the accused.

PW2 – Riziki Pili, testimony pointed out that on the fateful day of the incident, he was woken up by screams from the parents house. On arrival he observed the accused assaulting the deceased cutting her stomach and legs with knife. Further, when accused was done in inflicting physical harm against the deceased he turned against himself and started cutting his body.

PW3 – Dama Safari, offered evidence in regard to his response to the screams from the deceased homestead. When PW3 arrived at the scene, accused person was still inflicting harm by cutting the deceased stomach and within the same period he took the same knife and cut himself. The arrangement were made to escort the two to the hospital. As it happened the deceased succumbed to death due to the injuries.

PW4 – Chief Inspector Raymond stated that on 3.12.2016 he received information about a murder incident involving a domestic violence between the accused and the deceased. He sent a vehicle to collect both the accused and the deceased who were to be escorted to the respective hospitals. As the accused had suffered injuries he was to be treated while the deceased body headed for the mortuary.

Among the exhibits PW4 recovered from the scene in support of the charge were the clothes of the deceased kitenges, lessos and the murder weapon identified as a knife.

They were all escorted to Government analyst for forensic analysis. In the report of the analyst **Irene F. Mwariga** powered by consent produced the following exhibits: a wooden knife, lesso (named *mama ni kitenge*), lesso (named *kwa nia nipate kutulia*), yellow lesso with a

knot, red lesso, another lesso named *jogoo la shamba haliwiki mjini*) and a black T-shirt. The exhibits being a knife, lesso marked 2, 3, 4, 5, 6, 7 and black T-shirt tested positive for human blood.

On this information PW4 charged the accused with the offence of murder of his wife. Dealing with the evidence as tendered by the prosecution, accused was placed on his defence. He denied killing the deceased.

In addition accused also told the court that he heard that she passed on but did not know under which circumstances that he saw on account of his defence.

Analysis and Determination

Now that the prosecution and defence have given their perspectives. The following issues are up for determination.

Has the prosecution discharged the burden of proof beyond reasonable doubt capable of sustaining a conviction against the accused for the offence of murder contrary to Section 203 of the Penal Code.

If not so did the accused afford to marshal a strong defence to create a reasonable doubt in his favour deserving of an acquittal.

It is a general principle of Kenya's criminal justice system that the accused persons cannot be held liable unless his conduct was both unlawful and his mental state concluded contemporaneously with his acts of omission to commit the murder.

An ideal world in Criminal Law is where an accused person is only arrested and charged when there is sufficient evidence to prove his or her guilty beyond reasonable doubt.

In reference to the onus of proof it is always rested with the prosecution to adduce evidence to that effect that the accused is not innocent as the right under Article 50 (2) (a) entitles him in so far as the indictment is concerned.

In the case of **R v P. C. M. B. {1994} 1 SCR 555** the persuasive court from Canada said:

“The crown has a duty to present a case to meet that implicates the accused in a strong and cogent network of inculpatory facts. Once the crown discharges its obligations to present a prima facie case, such that it cannot be non-suited by a motion for a directed verdict or acquittal.”

Closer Home in the **Republic v Subordinate Court of the First class Magistrate at City Hall Yonginider Pall Sennuit & another Retread Limited {2006} 1EA 330 Nyamu J** held that:

“The burden of proof remains on the state throughout to establish the case against the accused beyond reasonable doubt. Even where the defence raises an issue to the prosecution case such as provocation, alibi, self-defence, the burden of proof, does not shift to the accused, instead the prosecution must negate the defence beyond reasonable doubt and the accused assumes no onus in respect of any such defence (see Festo Shirabu s/o Musungu v Reginam {1955} 22 EACA, May v Republic {1981} 1KLR 129)

Broadly, speaking predicated upon these guidelines the prosecution in indicting the accused with murder is required to establish the following ingredients of the offence:

(a) The death of the deceased.

(b) That her death was unlawfully caused.

(c) That in causing the death, accused harbored malice aforethought.

(d) That in all circumstances the accused has been placed at the scene of the crime as an actual participant involved to cause the death of the deceased.

Notably, with even the burden of proof it is cast upon the prosecution to prove a crime of this nature, with each element being distinct and therefore has to be proved beyond reasonable doubt.

It is one of that task I endeavor to accomplish hereinunder, to fully acquaint the evidence with the Law.

(a) Death of the deceased

Rex v Sirasi Bachamira {1936} 3 EACA 40, Rex v Mihoja s/o Manyenye {1942} 9 EACA 70 the courts observed that:

“the body of the deceased must be positively identified and proven by direct or circumstantial evidence beyond reasonable doubt. That proof is usually by medical evidence as stated in R v Cheya & another {1973} EA 500.”

This is fundamental because the offence of murder is tied with the right to life in Article 26 of the Constitution. From the testimony of PW1, PW2, PW3 and PW4, the deceased **Kadzo Charo Chenje** is no more since the 3.12.2016. The accused himself confirms the fact of death of his wife. The post-mortem report exhibit 5 admitted by consent corroborates the evidence of PW1, PW2, PW3 and PW4 respectively.

This element has been established beyond reasonable doubt.

(b) Causation and whether the time of execution of the murder it was unlawful act of omission.

Coke in the Third part of **the institutes of the Laws of England (London) W. Clarke & Sons {1817}** stated unlawful:

“if the act be unlawful it encompasses any conduct or omission prohibited by Law. The acid test on causation of murder is to be found in Section 213 of the Penal Code which fundamentally provides that the death of another human being need not be caused by the immediate act of the accused person.”

In this case and at this stage of the inquiry, the criteria to be assessed is the voluntariness of the conduct by the accused to commit the crime. In **S v Cunningham {1996} 1 SACR 631** the court observed inter alia:

“That the state in discharging the onus is assessed by the natural inference that in the absence of exceptional circumstances a same person who engages in conduct which would ordinarily give rise to criminal liability does so consciously and voluntarily. Common sense dictates that before this inference will be disturbed a proper basis must be laid which is sufficiently cogent and compelling to raise a reasonable doubt as to the voluntary nature of the alleged actus reus and, if involuntary, that this was attributable to some cause other than mental pathology.”

Without going into deeper constrictions details of Section 213 of the Penal Code, it focuses on liability of the accused who inflicts that wound which is the reason for the deceased to seek and receive medical treatment.

“The general principle applicable being that death need not be caused by the immediate act of the accused, for he can be held responsible for another person’s death although his act is not the immediate or sole cause.” (See **Textbook on Criminal Law by William Musyoka, 2nd Edition Reprint 2016 Law Africa at page 304 paragraph D**)

All these issues whether the doctor, clinical officer or nurse in circumstances under consideration acted diligently or negligently to interrupt the chain of causation is a question of fact to be proved by way of evidence what is more pertinent for the prosecution is to establish the proximate cause which demystifies unlawful act of causation and any aftermath action taken for the victim to receive medical intervention for the wounds inflicted by the accused.

Beyond this the Law is clear as can be appreciated in the case of **Crabbe v R {1985} 156 CLR 464** thus:

“If an accused knows when he does an act that death or grievous bodily harm is a probable consequence, he does the act expecting that death or grievous bodily harm will be the likely result, for the word probable means likely to happen that state of mind is comparable with an intention to kill or to do grievous bodily harm, a person who without lawful justification or excuse, does an act knowing that it is probable that death or grievous bodily harm will result, is guilty of murder if death in fact results.”

Under this element of unlawfulness of the offence in Section 203 of the Penal Code, it is necessary that the evidence qualifies that the conduct of the accused being complained of was a prosecution of the murder by an act which was dangerous to life.

As far as this case is concerned the prosecution evidence constituted eye witnesses from PW1 and PW2 who notwithstanding being children of the accused and the deceased they were emphatic on how the murder was executed by the accused against the deceased. Certainly in the testimonies of PW1 and PW2, earlier on the deceased was under instructions to go to the farm and cultivate it. When the accused returned from his errands, apparently for reason finding the deceased at home, a quarrel ensued. As pointed out by PW1 and PW2 in their evidence simultaneously accused armed himself with a knife which he used to inflict severe bodily harm to the stomach. As a result of the battery, the deceased preservation of her life diminished as screams from PW1 and PW2 called for help, given the need to have the deceased taken to the hospital. However, in the whole development it was also the evidence by PW1 and PW2, that the accused took the same murder weapon to self-inflict bodily harm as the deceased lay in the ground motionless.

In the vicinity of this incident it would seem that the accused was never confronted with an attack from the deceased to be compelled by the necessity of self-defence or the defence of another person under Section 17 of the Penal Code to apply violent force in retaliation.

The Court was also not told that the accused at the time he unlawfully acted was suffering from a psychological or neuropsychological disorder which reduced his discernment or impeded his ability to control his actions. Furthermore, the option of self-inflicting injuries was meant to demonstrate that in so assaulting the deceased, accused acted in self-defence from imminent danger of his life likely to be occasioned by the deceased.

On evaluation of the evidence, the prosecution did discharge the burden of proof that the accused attacked the deceased by use of excessive force. There was no iota of evidence that this was done to protect himself from an imminent danger to life, limb or freedom which could not otherwise be averted.

All the cautions on self-defence apply to the facts of this case. Although, the accused remain silent on this issue both on cross-examination and on his defence stage this was clearly a case of rage of a husband against his own wife.

An inference that can be drawn is that the accused defence and not amount to lack of criminal capacity sufficient enough to create a reasonable doubt that the death of the deceased was excusable and justified in the circumstances of the conflict which took place. It was in the discharge of this evidential obligation imposed on the accused that could have raised a rebuttable presumption to create a reasonable doubt on the case for the prosecution against him for the crime.

Unfortunately, that was never to be and in addition, no evidence was assembled to show that he had a temporary mental malfunction to unlawfully inflict fatal harm to the deceased. Regrettably, this ingredient is not available to the accused as a ground to challenge his indictment.

(c) Malice aforethought

Section 203 of the Penal Code defines murder as a crime where a person who causes the death of another does so with malice aforethought. The fundamental element is basically on the definition given under Section 206 of the Penal Code.

In sum, then, malice aforethought encompasses manifestation of the following circumstances:

“(a) An intention to cause the death of another.

(b) An intention to cause grievous harm to another.

(c) Knowledge that the act or omission causing death will probably cause death or grievous harm to some person, whether that person is the person killed or not, accompanied by the offence. Whether death or grievous injury occurs or not or by a wish that it may not be caused.

(d) An intent to commit a felony”

The yardstick by which the court should decide whether the accused had formed the necessary malice aforethought is better summarized by Holmes in the **Common Law (Boston) Little Brown & Co. 1881 at pp53, 54** as follows:

“If the known present state of things is such that the act done will vary certainly cause death, and the probability is a matter of common knowledge, one does the act, knowing the present state of things, is guilty of murder, and the Law will not inquire whether he did actually foresee the consequences or not. The test of foresight is not what this very criminal foresaw, but what a man of reasonable prudence would have foreseen.”

The other classical approach to a case on malice aforethought is what **Gordon** on

“Subjection and objective mensrea {1975} 17 Crim. L. Q. 355 at page 359 discusses the distinctions between subjective foresight and objective foreseeability in the following passage “what is important in the context of proof of mensrea is that certain objective descriptions of actions are in themselves descriptions of intentional actions, so that once the crown has proved what happened, they have established their case, and need not go on to prove separately the existence of some particular event or condition in the agent’s mind. In these cases proof of the external behavior is proof that he can show he was not a voluntary agent, is to show that the objective description offered by the crime is incorrect, by producing witnesses who described as an incident what the crown witnesses described as intentional, by showing e.g. that he did not push the victim but accidentally fell against him.”

On this issue the facts and the evidence must support *mensrea* for the prosecution to obtain Judgment in their favour. The survival of this central element to a murder charge was explicitly expounded in **R v Villan Court {1987} 2 S.C.R 636** in which the Court held inter alia that:

“The principles of fundamental justice requires mensrea reflecting the particular nature of that crime namely one referable to causing death. In addition to the intention to cause death, this can include closely related intention such as intention to cause bodily harm likely to result in death with recklessness as to that result.” (emphasis added)

The equivalent of the above principles to our own version under Section 206 of the Penal Code is as stated in **Nzuki v Republic {1993} KLR 171** where *mensrea* is premised as the predominant element for the offence of murder. In this regard the court held as follows:

“Before an act can be murder, it must be aimed at someone and in addition, it must be an act committed with one of the following intentions, the test of which is always subjective to the actual accused: (i).The intention to cause death (ii).The intention to cause grievous bodily harm (iii).Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from his acts, and commits those acts deliberately and without lawful excuse, with the intention to expose a potential victim to that risk as the result of those acts, it does not matter in such circumstances whether the accused desires those consequences, to ensue or not and in none of these cases does it matter that the one who succumbed the mere fact that the accused’s conduct is done in the knowledge that grievous harm is likely or highly likely to ensue from his conduct is not by itself enough to convert a homicide into a crime of murder.”

Where the trial Court is asked to exercise statutory power, therefore on the element of malice aforethought various factors comes into play. It is a matter of evidence and proof of any one circumstance as provided for under Section 206 of the Penal Code malice aforethought is stated to be proved beyond reasonable doubt in **Tubere s/o Ochen v R {1945} 12 EACA 63:**

“intention is to be manifested in the various acts of the accused for a positive inference to be drawn in favour of the prosecution. Thus the prosecution must show the nature of the weapon in possession of the accused, the manner it was used, the severity of the injuries inflicted and vulnerable parts of the body targeted and finally the conduct of the accused person.”

In the present case at going the discussion with the facts of the matter in respect to the onus of proof I hold the following view. The accused person left his house in the morning leaving the deceased behind with instructions that she was to go to the shamba to till the land. It did not take long as can be reduced from evidence of PW1 and PW2 he started a quarrel with the deceased which was escalated to a violent attack occasioning serious bodily harm to the stomach of the deceased.

More significantly, the accused armed himself with a knife directed at the deceased. The unlawful act of assault resulted in the deceased sustaining fatal injuries as confirmed by the pathologist in the post-mortem report – exhibit 5. The gravity of the injuries as documented in the post-mortem report comprised of perforated bowel, transverse the colon, transected ileum, right kidney, intra-abdominal. The pathologist opined that the deceased cause of death was due to severe hemorrhage from assault leading to exsanguination, shock complicated by sepsis.

Further with respect to the accused, as founded on the evidence of PW1 and PW2 he turned the knife against himself such that from the eye of a third party, the use of force was necessary to protect himself from an attack perpetuated by the deceased. First in this case, the eye witness evidence of PW1 and PW2 clearly demonstrates that the deceased never attacked the accused. Secondly, there was neither provocation nor an act of assault from the deceased targeted at the accused. In almost every event as described by PW1 and PW2 the accused was the main actor, stabbing the deceased with a knife, placing her on the ground, failed to call for any medical intervention or take steps to ensure that his victim has been escorted to the hospital.

The dangerous act of using a knife aimed at vulnerable parts of the body several times clearly distinguishes it from any other unlawful act suggestive of causing death under our Penal Code. In the case at bar malice aforethought is implied from the unlawful acts of assault by the accused upon the deceased.

I am not even sure that there was any iota of evidence of provocation as defined in Section 207 of the Penal Code perhaps and precisely the passage in **R v Campbell {1977} 17 Q. R. 2d 673 CA** sums the principles which can apply in context of this case:

“There may, however, be cases where the conduct of the victim amounting to provocation produces in the accused a state of excitement, anger or disturbance, as a result of which he might not contemplate, the consequences of his acts and might not, in fact, intend to bring about those consequences. The accused intent must usually be inferred from his conduct and the surrounding circumstances, and in some cases, the provocation afforded by the victim, when considered in relation to the totality of the evidence, might create a reasonable doubt in the mind of the jury or judge whether the accused had the requisite intent. Thus, in some cases, the provocative conduct of the victim might be a relevant item of evidence on the issue of intent, whether the charge be murder, provocation in that aspect, however does not operate as a defence, but rather as a relevant item of evidence on the issue of intent.”

In the instant case, the factors and evidence of witnesses has been reviewed in relation with the defence. There is no evidence from the eye-witnesses PW1 and PW2 that at the time accused stabbed the deceased he was provoked to a proportionable degree of resentment to keep the blood boiling to the level of inflicting the fatal wounds.

I hold the view in this case that the accused started a quarrel immediately on return from outside, followed with an assault and battery of such a nature that it turned vicious when he used a knife to inflict further serious injuries. For me to retire in the heat of passion induced by provocation, by a simple blow is a very different matter from making use of a deadly weapon like a knife to harm the deceased.

In assessing the reality of the mental or emotional functionality, one can argue that the shaping of provocation to inflict grievous harm was a result of anger and aggression inherent in the accused DNA. One might also speak of people who are short-circuited to impair their freedom of choice. All things being equal to ascribe to the nature of man there are set of beliefs of being that there exist in him some level of anger and aggression to accord motivation for retaliation. From the view point of anger and aggression **Leonard Berkowit Z** in article on aggression its causes, consequences and control (**Boston**) McGraw – Hiha {1993} at 300 – 01, he observed as follows in the passage hereunder:

“The first automatic and involuntary reactions to negative stimuli can be modified quickly as the aroused persons think about their feelings, the instigating events, their conceptions of what emotions they might be experiencing, and the social rules regarding the emotions and the actions that may be appropriate under the circumstances. The initial rudimentary anger experience may be intensified enriched and differentiated, suppressed, or eliminated altogether by these cognitions. By giving attention to their failings, unhappily aroused people may also exert self-control, restraining their negative affect – produced aggressive urges and perhaps also lessening the anger they perceive in themselves.”

For a number of reasons in this case, the prosecution has discharged the burden of proof that the accused’s unwrongful behavior is not excusable under the guise of provocation in Section 208 or defence of self as provided for in Section 17 of the Penal Code.

Further, the accused did not show that he was adequately provoked and as a direct result of the provocation he became emotionally upset that he lost control and killed the deceased. Here it must be noted that the mind of an accused deficient of mental balance is not sufficient to justify the excusability of the killing. Bearing in mind all these points the accused acts of disturbance, and attack was planned and based on revenge or punishment inconsistent with loss of self-control. The power to switch the fighting mode button and aggressively assault the deceased is my view properly speaking suspect with respect to the circumstances of this case.

I think such an argument would be stretching provocation and self-control too far and too fast.

Further, the position laid down in **Campbell** broaden the class of relevant characteristics that anger unless falling within the expected excusable elements in homicide takes a back seat to trigger the death of another human being.

“Obviously, anger may affect a person’s Judgment, may prompt a person to engage in conduct that he or she would never have engaged in otherwise. Impulsive action is necessarily thoughtless, but it is still consistent with the mensrea required in murder under Section 203 of the Penal Code.” (emphasis added)

It is conceivable in this case how the accused armed himself with a knife only to cut the deceased severally as a result she died instantly soon thereafter from bodily harm. All that the accused did can be inferred from the manner he went about killing the deceased. In considering Section 206 of the Penal Code and in conjunction with Section 203 of the Penal Code, the weight to be given and the evidence adopted resonates with the principles in **R v Cooper {1993} 1SCR 146**, the Court held:

“The determination of whether the guilt mind or mensrea concedes with the wrongful act will depend to a large extent upon the nature of the act. For example, if the accused shot the victim in the head or stabbed the victim in the chest with death ensuing a few minutes after the shooting or stabbing, then it would be relatively easy to infer that the requisite intent or mensrea concided with the wrongful act (actus reus) of shooting or stabbing. As were as, a series of acts may form part of the same transaction. For example, the repeated stab wounds of the knife continuing over several minutes are all part of the same transactions. In these circumstances if the requisite intent concides at any time with the sequence of stabs then that could be sufficient to find a conviction.”

If his contact was necessitated by provocation, the accused defence sheds no light that some act, or series of acts done by the deceased were of a nature to cause any reasonable man to sudden loss of self-control to render the mind to trigger a violent attack.

Therefore, on account of this charge no amount of provocation was done and said to warrant the unlawful conduct as defined in Section 208 of the Penal Code. In total sum, this is a man who had overworked himself with heat of passion merely to transitory his intention to an act of assault against the deceased. In this characteristics, I am of greater difficulty to avail the accused any such defence capable of making murder to manslaughter.

The consequences of this finding as discussed above, is that in my Judgment this case cannot pass the test of a manslaughter charge but squarely murder executed with malice aforethought under Section 203 of the Penal Code. The essentials of the accused defence is even more telling he also learnt of the death of the deceased. He feigns ignorance while the nature and the cause of murderous rage was orchestrated by him from the word go without any mitigation to safe the life of the deceased.

For the above reasons I am satisfied that the prosecution has discharged the burden of proof beyond reasonable doubt that the accused committed the offence of murder contrary to Section 203 of the Penal Code. The defence offered in answer to the charge fails to create a reasonable doubt to exonerate the accused of criminal culpability.

I therefore enter a verdict of guilty and conviction for the offence as charged. That is the Judgment of the Court.

Sentence

The right to life is jealously protected in terms of Article 26 of the Constitution of Kenya, 2010. It is provided that:

26. Right to life

(1) Every person has the right to life.

(2) The life of a person begins at conception.

(3) A person shall not be deprived of life intentionally, except to the extent authorised by this Constitution or other written law.

(4) Abortion is not permitted unless, in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law.

Initially, the offence of murder is criminalised in terms of section 203 as read with 204 of the Penal Code, Laws of Kenya. The sentence prescribed is mandatory death sentence. The said sections provide as follows:

203. Murder

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

204. Punishment of murder

Any person convicted of murder shall be sentenced to death.

However, the landmark decision in **Francis Karioko Muruatetu & Another vs. Republic, Petition No. 15 of 2015 (2019) eKLR**, brought about a paradigm shift as far as the aforementioned mandatory minimum sentences are concerned. The aforesaid case declared mandatory

death penalty (cited above) and its commutation to life imprisonment by an administrative fiat, unconstitutional, null and void. This emerging jurisprudence equips the judge with some measure of discretion in determining appropriate sentences which are proportional to the individual circumstances of the case at hand.

By nullifying the death penalty, the Supreme Court seems to suggest that it is only the mandatory minimum nature which was discarded. However, in appropriate cases, death sentence remains unconstitutional and may be imposed only on a person convicted of murder committed in aggravating circumstances. By the same token the court is also equipped with discretion to vacate the death penalty in cases whose factual matrix exhibits extenuating circumstances or justifies the same.

In assessing an appropriate sentence, the court has to take into consideration the totality of mitigatory factors and sought to weigh them *vis-a-vis* the aggravatory factors at the same time seeking to strike a balance on the nature of the offence, murder with malice aforethought and the offender, his personal circumstances and societal interest, that justice must not only be done but must be seen to be done.

While the court is entitled to refer to the evidence in order to determine whether there existed aggravating circumstances or otherwise for the purpose of meting out the sentence, it is not proper for the court to set out to analyze the evidence as if it is meant to arrive at a decision on the guilt of the accused.

According to **Francis Karioko Muruatetu & Another vs. Republic, Petition No. 15 of 2015**:

“[71] To avoid a lacuna, the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:

- (a) age of the offender;**
- (b) being a first offender;**
- (c) whether the offender pleaded guilty;**
- (d) character and record of the offender;**
- (e) commission of the offence in response to gender-based violence;**
- (f) remorsefulness of the offender;**
- (g) the possibility of reform and social re-adaptation of the offender;**
- (h) any other factor that the Court considers relevant.**

In Kenya, many courts have highlighted the principles of sentencing. One such case is the High Court criminal appeal decision in **Dahir Hussein v. Republic Criminal Appeal No. 1 of 2015; [2015] eKLR**, where the High Court held that the objectives include:

“deterrence, rehabilitation, accountability for one’s actions, society protection, retribution and denouncing the conduct by the offender on the harm done to the victim.”

The instant case is a murder which falls within the bounce of domestic violence. A case where father apports roles for every member of the family and if the same has not been performed, disciplinary measures are follows anyone that did not comply with his orders. Non-compliance to such instructions is what triggered a conflict in this matter by way of exchanging words.

In aggravation, I noted that the accused armed himself with a dangerous weapon (a panga) and violently assaulted the deceased, inflicting severe bodily harm to the stomach. The killing was callous and brutish. The sacrosanct life of a mother was unnecessarily and senselessly lost. The murder was also committed in front of children which may affect them psychologically for the rest of their lives. What is more astonishing is the readiness of people in resorting to violence. It is this kind of behavior that the law seeks to address.

In foregoing, the only mitigating circumstance in this matter is that he is a family man and that he is a first offender. In the premises, as demonstrated above, the aggravating circumstances in this case by far outweigh the mitigating circumstances. The accused is hereby sentenced to thirty-five (35) years imprisonment with effect from 29.12.2016.

It is so ordered.

14 days right of appeal

DATED, SIGNED AND DELIVERED AT MALINDI THIS 22ND DAY OF JULY 2020

.....

R. NYAKUNDI

JUDGE