



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CRIMINAL CASE (MURDER) NO. 70 OF 2016

REPUBLIC.....PROSECUTOR

-VERSUS-

DENIS KIPKOECH.....ACCUSED

JUDGMENT

1. The accused Dennis Kipkoech was charged with the offence of murder of one Rose Awori deceased, on the 6th December 2016 at Ingobor, Kapkures Location Nakuru West Sub County Contrary to **Section 203 as read with Section 204 of the Penal Code** on the 6th February 2017. He pleaded not guilty to the charge.

2. The prosecution called six witnesses, upon whose evidence the accused was put on his defence. He gave unsworn evidence.

Upon closure of both the prosecution and defence evidence, the Director of Public Prosecutions as well as the accused's advocate opted not to tender any submissions.

It is upon the evidence on record that I am obligated to evaluate, make own findings and come to a conclusion on whether the accused is guilty as charged or not.

3. The offence of Murder is defined in **Section 203 of the Penal Code**, thus

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

Section 206 thereof defines the meaning of malice aforethought as

(a) An intention to cause the death or to do grievous harm to any person whether that person is the person actually killed or not.

(b) Knowledge that the act or commission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not.

4. To prove the offence of murder, the prosecution is mandated to prove the following ingredients:

(a) The fact and cause of death of the deceased person

(b) That the death of the deceased was as a result of an unlawful act or omission on the part of the accused person.

(c) That such unlawful act or omission was committed with malice aforethought.

5. In a case depending exclusively on circumstantial evidence, the court must before deciding upon a conviction find that the inculpatory facts are incompatible with the innocence of the accused and incapable of explanation upon any other hypothesis than that of quit – **Mwangi –vs- Republic (1983) e KLR and Republic –vs- Daniel Musyoka Muasya & 2 Others (2014) e KLR.**

Further, the decree of proof of a murder trial is beyond any reasonable doubt – **Bhatt –vs- Republic (1959) EA 332.**

6. **PW1 Hillary Mutua Kipyegon** testified to have known the accused as he used to work at his uncle's home. On the fateful day, the accused called him to his uncle's home, where he found him seated at the cattle yard, and upon talking to him, he told him that he had killed a lady who had rejected his advances to marry him. It was his testimony that the accused was drunk and his hands were soaked with blood,

after which he led him into his house.

This witness testified that in the house, he found the body of a lady lying on the floor with the head decapitated. Upon seeing the body, **PW1** testified that he did not see any weapon there but ran away calling people to his uncle's house upon which people gathered and arrested the accused at the scene of crime.

7. **PW2** Nixon Kipsang knew both the accused and the deceased as they were his neighbours. His testimony was that when called by **PW1**, he ran to the scene of crime where he found the accused seated, and upon asking him what the problem was, he told him that he had killed, and upon opening the accused's door to his house, he saw a body with the head cut off, and blood all over. With other neighbours, the village elder and the chief, they took the body to Kaptembwa police station, while the accused was taken to hospital as he had told him that he had taken cattle dip.

8. **PW3** was Dr. Titus Ngulungu a Government Pathologist at the Nakuru Provincial Hospital. He produced a post mortem report prepared by his fellow doctor Kanyotu. It is dated the 13th December 2016. The doctor's observations were that the head was completely decapitated around the neck severing all the neck veins and nerves. His opinion on the cause of death was decapitation with a sharp object. It was produced as Exhibit No 7.

9. **PW4** was the employer of the accused. He was called and informed of the incident at his home by the accused. He found blood stains in the accused's house. He did witness the commission of the offence.

10. **PW5 Tobias Imengo Oyugi** stated to have been the husband of the deceased. On the fateful, his testimony was that he left his wife (deceased) and children sleeping as he went to work and only informed in the evening of the happenings. He went to the mortuary and identified the body as that of his wife. He did not know the accused prior to the incident.

11. **The investigating officer Sgt. Ombati testified as PW6;**

It was his testimony that the accused was brought to the police station by members of the public with an allegation that he had killed a woman.

At the scene of crime when he visited, it was his evidence that he found the body of the deceased with the head cut off inside the accused's house and a *panga* at its side, produced as Exhibit 2. He testified that the scenes of crimes officers took photographs of the scene and thereafter took the body to the mortuary, and further attended the post mortem examination.

12. When the accused was required to defend himself, he opted to give unsworn statement.

His evidence was that he had no relationship with the deceased and did not kill her, nor did he know who killed her.

His evidence, was that on the 6th December 2001 at about 5.30p.m., the deceased went to his house to collect vegetables and milk. He testified that he asked her to go for the milk later then went to untie and bring the cows home. It was his testimony that when he went back home, he found the deceased's body lying outside the floor of the main house then he called **PW1** Hillary, after which he was taken to hospital for treatment for headache.

13. As I stated earlier in this judgment, no submissions were offered by the prosecution or the accused's advocate.

At paragraphs 3 and 4 above the ingredients of murder are stated.

None of the prosecution witnesses were present and saw the commission of the offence by the accused or anyone else. Evidence tendered is that the accused was alone in the homestead tending his employer's cows. It is also in evidence that **PW1**, a neighbor quickly answered to the accused's call and went to the homestead where he found the accused with blood all over his hands and the body of the deceased with the head decapitated lying inside his house.

14. It is **PW1's** evidence that the accused told him that he had killed the deceased because she had rejected his advances to marry her. **PW2** also answered the call by **PW1** and too ran to the scene. He too testified that the accused told him that he had killed, and indeed saw the body of deceased with the head cut off and blood all over.

15. Likewise **PW6** the investigating officer found the body of the deceased with a decapitated head inside the accused's house, and found a *panga* at its side – Exh. 2.

16. The cause of death was certified by the doctor who performed the postmortem examination as De-capitation of the head with a sharp object. The post mortem report was dated 13th December 2016 and produced as Ext 1.

17. Prosecution witnesses **PW1**, **PW2** and **PW6** placed the accused person at the scene of the crime.

He called **PW1** who then called **PW2** and all found him at the scene of crime.

Though none of the witnesses saw the accused commit the offence, there is sufficient circumstantial evidence that directly links the offence to the accused.

The accused defence is a mere denial but does not challenge the prosecution witness's evidence at all.

18. In the case **Abanga alias Onyango –vs- Republic Cr. Appeal No. 32 of 1990 (UR)** the Court of Appeal rendered that

“It is settled that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests:

(i) The circumstances from which any inference of guilt is to be drawn, must be cogently and firmly established.

(ii) Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused.

(iii) The circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that with all human probability the crime was committed by the accused and no one else.”

19. Without a doubt, the prosecution evidence in its totality forms a very strong chain so complete that the accused has no route to escape. The murder weapon, a *panga* was found beside the body of the deceased. The body of the deceased was found inside the accused's house, where he lived alone. The accused's hands were all covered with blood.

20. No evidence was tendered that during the period 5.30p.m. and 6.00p.m., any other person visited the accused home save the deceased.

It is the duty of the prosecution to prove the accused's guilt beyond any reasonable doubt.

In my considered opinion, that burden of proof has been discharged satisfactorily.

21. I find the accused guilty of the offence of murder as charged. He is accordingly convicted.

Delivered, Signed and Dated at Nakuru this 31st Day of October 2019.

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J.N. MULWA

JUDGE