



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NANYUKI**

**CRIMINAL CASE No. 35 OF 2016**

**REPUBLIC.....PROSECUTOR**

*Versus*

**JOSEPH KIGUNDU KIMANI.....RESPONDENT**

**JUDGMENT**

**1. JOSEPH KIGUNDU KIMANI**, the accused, is charged with the offence of murder Contrary to **Section 203 as read with Section 204 of the Penal Code**. He pleaded not guilty.

2. The prosecution's case is that the accused befriended V W M deceased. The deceased was a school girl, then attending Form 4. The mother of the deceased, W M, noting that friendship, forbade the accused from continuing with the friendship. She informed the accused that he could not continue with the friendship because deceased was a school going girl.

3. The prosecution's case is that the accused did not heed the warning of deceased mother and on 1<sup>st</sup> June, 2013 he went to the deceased's home, stabbed her severally and stabbed himself. The deceased succumbed to her injuries but the accused survived.

4. The prosecution was required in this case to meet the criminal standard of proof, that is beyond reasonable doubt. That principle was set out in the case **WOOLMINGTON – V- DPP [1935] A. C. 462** where the court had this to say:

*“Throughout the web of the English criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt, subject [ to the qualification involving the defence of insanity and to any statutory exception]. If at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given either by the prosecution or the prisoner, as to whether [ the offence was committed by him], the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.”*

5. In the case **MILLER – V- MINISTER OF PENSION [1947] 2 ALL ER** the court held that that the standard of proof, beyond reasonable doubt, does not mean beyond a shadow of doubt.

6. The prosecution is required to prove:

**(i) Death of deceased,**

**(ii) Proof that the deceased met her death as a result of unlawful act of accused; and**

**(iii) Proof that the said unlawful act of the accused was committed with malice aforethought.**

7. Dr. Joseph Karimi Kinyua conducted the post-mortem of the deceased body on 6<sup>th</sup> June 2013. The doctor found that the deceased had been stabbed fourteen times. The deceased suffered several deep cut wounds all over her body. Consequently the doctor concluded, on performing the post mortem, that the deceased died due to excessive bleeding with cut of the heart muscle.

8. Death was therefore confirmed to the required standard. Death was caused by a sharp object, a knife, which was produced as an exhibit in evidence.

9. J W M (P W 1) was a younger sister of the deceased. She was 20 years old when she testified before court. She stated that she was a student at **[particulars withheld]** Secondary School, attending Form two.

10. P W 1 stated that she knew the accused as a friend of her elder sister, the deceased.

11. On 1st June 2013, she stated that the deceased had come home from school. They were together at home in the sitting room. P W 1 informed the deceased that she was going to the bedroom to rest. As she rested she heard a knock at the door. She presumed that it was their brother. After a short while P W 1 heard the deceased saying good bye twice. Deceased said those words in English. P W 1 decided to find out why the deceased was saying good bye. This is what P W 1 stated in evidence.

***“Going to the sitting room I found he accused Joseph lying on my sister [ the deceased] and he [accused] was stabbing her [the deceased]. He was stabbing at the stomach. Joseph was sitting on my sister...”***

12. P W 1 rushed to the back door of the house got out and locked it from outside. She similarly locked the front door from the outside.

13. P W 1 rushed to the neighbour’s house. The neighbour is D M N (P W 2). Both P W 1 and P W 2 went back to the house and peeped at the window. P W 1 said that she saw that the accused had stabbed himself and was asking for assistance to remove the knife from his stomach. The knife was imbedded in his stomach. P W 1 identified that knife as the one exhibited before court.

14. P W 2 stated that on that day he was working in his farm when P W 1 asked him to accompany her to her house. P W 1 informed P W 2 that there was someone who attacking her deceased sister. They went to P W 1’s house and this is what P W 2 said:

***“I went to the window I saw two people lying on the ground. They were inside the house. I saw the girl (the deceased) was lying facing down with her hand supporting the head. The man (the accused) was lying facing up..... The Man had lifted his T-shirt and I could see a knife imbedded in the stomach.”***

15. P W 2 also identified the knife imbedded in accused stomach as the one exhibited before court. The mother of the deceased, and of P W 1, W M, recalled the events of that day.

16. On that day her daughter, the deceased, arrived at her food canteen at 1.30p.m. After the deceased had eaten lunch at that canteen she left and went home. The accused, known to deceased’s mum as J, who had finished taking his tea and mandazi at that canteen, went afar and watched the deceased walk home.

17. The deceased’s mother stated in evidence, that the deceased and accused were friends. However she stated that she “broke” that friendship about one month before the incident, but that when she told the accused to stop relating with deceased the accused retorted:

***“If I will separate with V (deceased) it will either be she dies or I die.”***

18. Deceased mother after getting report that something had occurred at her house on 1<sup>st</sup> June 2013, she left her canteen. On entering her house she found deceased lying down on her stomach. The mother could not immediately tell what was wrong with the deceased. The mother also noted that the accused was lying on his back. He had cut his stomach and he also stabbed himself on the chest.

19. The deceased and the accused were rushed to Nanyuki Teaching and Referral hospital. The deceased died whilst being treated. The doctor who treated accused noted that he was agitated although there was no evidence of use of alcohol. The doctor in the P3 form indicated that the accused had a penetrating cut wound around epigastrium region, that is the upper region of the abdomen, and another deep cut wound in inguinal region of the body. The doctor formed the opinion that those injuries were caused by sharp object.

20. In summarizing the above evidence it becomes clear that the prosecution met the standard of proof in proving that the accused caused the death of the deceased by means of an unlawful act. The evidence of the younger sister of deceased: who saw the accused lying on top of the deceased, stabbing her, was supported by corroborative evidence of P W 2 and the deceased’s mother.

21. Both P W 1 and P W 2 on visiting the scene found the deceased lying down with several stab wounds and the accused lying down with a knife imbedded in his stomach. There was no one else in that room.

22. The third ingredient the prosecution was required to prove was that the accused unlawful act was committed with malice aforethought. Malice aforethought is stated **under Section 206 of the Penal Code as:** Malice aforethought shall be deemed to be established by evidence proving anyone or more of the following circumstance-:

***(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) 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.***

23. In the case GERALD WATHIU KIRAGU – V- REPUBLIC [2016] eKLR the court stated that malice aforethought “*referred to here is the criminal intent or mens/rea to murder.*” In other words the prosecution needed to prove that the accused intended the consequences of his action. In the case: CUNLIFFE – V- GOODMAN [1950] 2KB 237 intention was stated as:

*“Connotes a state of affairs which the party intending.... does more than merely contemplate: It connotes a state of affairs which, on the contrary, he decides, so far as in him lies, to bring about.”*

24. In this case the accused armed himself with a sharp knife. Followed the deceased as she went home. Then on gaining entrance to her house stabbed the deceased 14 times. The evidence adduced by the prosecution clearly shows that the accused intended to kill the deceased and himself. Unfortunately he survived and she did not. There is no doubt that the accused in stabbing the deceased 14 times fore saw that the consequences is that she would die. He intended to kill the deceased

25. The evidence which was adduced by prosecution was very clear and I believed the witnesses who corroborated each other. It is for that reason that I reject the accused unsworn statement that another person entered the house and stabbed him and the deceased. At no time during prosecution’s case was that defence advanced. The younger sister of the deceased, a very credible witness in my view, testified and stated she saw the accused lying on top of the deceased stabbing her. The said sister ran out locked all the exit doors from the outside then ran to get P W 2’s help. When they returned to the house with P W 2 only the deceased, who by then was unconscious, and the accused were in the house. The house of P W 2 was said to be very close and therefore there was no opportunity for a third person to enter the house, stab both deceased and accused, then disappear without being noticed by P W 1 and P W 2. The accused defence is therefore rejected.

26. In view of the above I find JOSEPH KIGUNDU KIMANI guilty of the murder of V W M, Contrary to Section 203 of the Penal Code. I convict him accordingly.

**Dated and Delivered at Nanyuki this 18<sup>th</sup> APRIL 2018**

**MARY KASANGO**

**JUDGE**

**Coram**

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

Accused: Joseph Kigundu

For accused.....

For state: .....

Language .....

**COURT**

Judgment delivered in open court

**MARY KASANGO**

**JUDGE**