



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 31 OF 2008

REPUBLIC.....PROSECUTOR

-VS-

CHARLES MUNGERIA KARUMA.....ACCUSED

J U D G M E N T

1. Charles Mungeria Karuma (“the Accused”) is charged with the offence of 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 26th March, 2008 at Linjoka Sub Location, Ntunene Location in Igembe District within Eastern Province, the accused murdered Jane Kambura Baikilithu. The accused denied the charge with the prosecution calling 4 witnesses to prove its case.

2. PW1 Gerald Mithika testified that on the night of 26th March, 2008 at about 4am, he was at home with his wife when he saw fire on their house. That, he screamed and started putting off the fire. At about 6am, **Doreen Kendi (PW2)** accompanied by **Phineas Kimathi (PW3)** came screaming and told him that their father had killed their mother at night. It was his evidence that he knew the father of the children who was his brother (the accused). That, he went to check at his brother’s house and saw a human head outside the house near the gate and as he approached the door, he peeped and saw a human body lying on the ground and that there was nobody inside. It was his further evidence that there was a bloodstained slasher next to the body.

3. PW1 then rushed to Laare Police Station and reported the matter. He told the court that the head he saw was that of Jane Kabura who was married to his elder brother (the accused). That before the incident, the accused used to complain that the deceased wanted to bewitch him and that he would kill her.

4. PW 2 was Phineas Kimathi a 9 year old pupil at Linkoja primary school. He gave a sworn statement the court having satisfied itself that he was intelligent enough to understand the nature of an oath. It was his evidence that on a date he could not recall, when he woke up in the morning, he saw the head of his mother near the gate. Since he was alone and did not know where his father, the accused was, he told his sister **Doreen (PW3)** about it and they reported the same to their uncle (**PW1**). On the material night, **PW2** slept in the same house with his mother and father and he did not see who cut his mother’s neck. The previous night, his parents talked but his father pointed a finger at his mother telling her to look at him for the last day and that he didn’t hear anything else.

5. PW3 Doreen Kendi testified that sometimes in the year 2008 in a month and date she could not recall, she was asleep in her grandmother’s house when she heard **PW2** cry. She went to check the cause and

saw the body of someone lying inside the house and that she did not see her parents. She then went out screaming and informed (**PW1**) and at the gate she saw a human head.

6. **PW4 IP Geisania Kiribo**, testified that on 26th March 2008, he was at Laare Police Station when **PW1** came and reported that the accused had murdered his wife. He noted the report and proceeded to the scene in the company of Corporal Kiboi, PC Langat and **PW1**. On arrival, they found a human head immediately after the gate within the compound of the accused and beside it there was a slasher which was blood stained. They entered the house and found headless body of a female lying on the ground beside the bed. They tried to look for the accused but they did not find him as he had run away. They recovered the body and took it to the Meru Hospital Mortuary. He then commenced investigations and the accused was arrested at Katerwa by the Administration Police Service.

7. **PW4** produced the slasher that he had recovered from the scene as **PEXh.1**. He further told the court that he attended the postmortem of the body which was conducted by a Dr. Macharia of Meru Hospital. Since the said doctor could not be traced, **PW4** produced the postmortem report as **PEXh.2**.

8. After the close of the prosecution's case, the accused was placed on his defence. He opted to remain silent and his counsel intimated to court that he would not make any submissions but would rely on the evidence on record.

9. I have carefully considered the evidence on record. The accused is facing a charge of murder. **Section 203 of the Penal Code** defines that offence as follows:-

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

10. From the above definition, in order to prove the offence of murder, three ingredients must be established. These are; proof of the fact and the cause of death of the deceased, proof that the death of the deceased was the direct consequence of an unlawful act or omission on the part of the accused and finally proof that the said unlawful act or omission was committed with malice afterthought.

11. The burden lies with the prosecution to prove its case against the accused on the standard of proof of beyond any reasonable doubt. On the first issue of the fact and cause of death, **PW1, PW2 and PW3** testified how on the material day they found outside the house of the accused near the gate, a head which they identified to be that of the deceased. Inside the accused's house they found the deceased's headless body. **PW4** produced a slasher which was recovered from the scene as **PEXh.1**. He also produced a postmortem report prepared by DR. Macharia of the Meru Hospital as **PEXh.2**.

12. According to the postmortem report, the body had been severed from the body at the level C3. There was deep cuts on the scalp, damage to the trachea and the major blood vessels at the neck and there was compound fractures of the parietal bones with deep lacerations to the brain. The doctor concluded that the cause of death was cardiovascular arrest secondary to head and neck injury caused by assault.

13. On the foregoing, I am satisfied that the prosecution had succeeded to prove to the required standard the first issue, that is the fact of as well as the cause of death of the deceased.

14. The second issue whether the death of the deceased resulted from an unlawful act of the accused. There was no eye witness to this incident. The prosecution relied on circumstantial evidence. In **SAWE – V- REP [2003] KLR 364** the Court of Appeal held:-

“In order to justify, on circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypotheses than that of his guilt. There must be no other co-existing circumstances weakening the chain of circumstances relied on. The burden of proving facts that justify the drawing of this inference from the facts to the exclusion of any other reasonable hypothesis is on the prosecution and always remains with the prosecution. It is a

burden, which never shifts to the party accused.”

15. **PW1** testified how **PW2 and 3** reported to him that their father (the accused), had killed their mother in the night. The uncontroverted evidence was that the body of the deceased was recovered from the house of the accused with its head severed. The head was recovered a few meters from where the head was lying. The evidence of **PW1, PW2 and PW3** was corroborated by **PW4** who further confirmed that, he a blood stained slasher from near where the body less head was. All this evidence remained uncontroverted and unshaken.

16. **PW1** told the court that before the incident, the accused used to complain that the deceased wanted to bewitch him and that he would therefore kill her. **PW2** testified that on the material night he slept in the same house with his father (the accused) and his mother (the deceased). He further testified that he saw his father point a finger at his mother telling her to look at him for the last day. This testimony remained unchallenged and unconverted. **PW2** placed the accused at the scene when he told the court that, on the material night the accused was at home with the deceased and sworn to the deceased to look at him for the last day.

17. There was undisputed evidence that on the material night that the deceased was murdered, the deceased was sleeping in the same room with the accused and **PW2**. The following morning at about 6am or thereabout, the deceased was found murdered inside the house with her head having been severed and thrown near the gate and the accused was nowhere to be seen. A blood stained slasher was found next to the deceased’s head. The foregoing set of facts called for an explanation.

18. When the accused was placed on his defence, he opted to remain silent and the case as set out by the prosecution remained uncontroverted. The accused was not bound to prove his innocence as the burden of proof never shifted to him. However, the prosecution had succeeded to place the accused at the scene; it was established that the accused had sworn at the deceased the previous night telling her to look at him for the last day; the following morning the body of the deceased was found headless in the same house the accused slept with the deceased but the accused was nowhere to be seen.

19. From the foregoing, I am satisfied that the circumstances of this case taken cumulatively, form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and none else. Consequently, I am satisfied that indeed it was the accused person who killed the deceased by severing her head with a slasher (locally known as C-Line). I think from the facts that had been established, it called for the accused to explain how his wife with whom he was in the same house the previous day met her death.

20. In any event, the record would show that, when the accused took the plea before Emukule J on 9th April 2008, he made certain admissions which when taken with his silence in his defence leave the court with no doubt as to who committed the offence. The proceedings of 9th June, 2008 reads:-

“Charge read and explained to the accused in Kimeru which he understands, and the accused says. The deceased was my wife. I woke up and met her at the door and I cut her. I did not know what I was doing. I thought it was a thief who was entering the house. I leave it to court for determination”.

21. An important ingredient for the offence of murder is malice aforethought. The circumstances which constitute malice aforethought are set out in **Section 206 of the Penal Code** as follows:-

“206. 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) 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.”

22. Having come to the conclusion that it was the accused and no one else who caused the death of the deceased, the next question which this court has to ask itself is whether the accused had the necessary malice aforethought at the time of the commission of the offence to support a charge of murder. In **DANIEL MUTHEE -V- REP. CA NO. 218 OF 2005 (UR)**, the Court of Appeal while considering what constitutes malice aforethought, stated:-

“When the appellant set upon the deceased and cut her with a panga several times and then proceeded to cut the young Allan in similar manner, he must have known that the act of cutting the deceased persons on the head with a sharp instrument would cause death or grievous harm to the victims. We are therefore satisfied that malice aforethought was established in terms of Section 206(b) of the Penal Code.

In view of the foregoing, we are in no doubt that the appellant was convicted on very sound and watertight evidence as his guilt on the two counts of murder was proved beyond any shadow of doubt.”

23. In the instant case, the evidence was that the deceased’s body was found inside the accused’s house whereas the head was found near the gate. The head had been severed from the rest of the body and the force that was used must have been, to say the least, so brutal and forceful. The act of severing the head from the body was certainly meant to kill the deceased and that must have been the sole intention. The accused must have been aware that such an action would lead to death or cause grievous bodily harm to the deceased. The attack on the deceased was so vicious and severe.

24. Taking into totality all the circumstances in this case, I find that the prosecution proved malice aforethought within the meaning of ***Section 206 (a) of the Penal Code CAP 63 of the Laws of Kenya*** and that the accused had the requisite malice aforethought to support the charge of murder as at the time of the commission of the offence.

25. In the circumstances, I find the accused, Charles Mungeria Karuma guilty of the murder of Jane Kambura Baikilithu and convict him accordingly under ***Section 322 of the Criminal Procedure Code CAP 75 of the Laws of Kenya***.

DATED and DELIVERED at Meru this 30th day of May, 2018.

A. MABEYA

JUDGE