



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL CASE NO. 16 OF 2011

REPUBLICSTATE

VERSUS

DAPHINE NJOKI MUIRURI ACCUSED

JUDGMENT

The accused **DAPHINE NJOKI MUIRURI** faces a charge of **MURDER CONTRARY TO SECTION 203 as read with SECTION 204 OF THE PENAL CODE**. The particulars of the charge were that

*“On the 10th day of February 2011 at Mawingu area, Mawingu Location. Olkalau Division, Nyandarua Central District within Central Province murdered **JOSEPH KARIUKI**”*

The accused pleaded ‘**Not Guilty**’ to the charge and her trial commenced before **Hon. Justice William Ouko** (as he then was) on 18/5/2011. The Hon. Judge took the evidence of the first three (3) witnesses. Following the elevation of Justice Ouko to the Court of Appeal Hon. Justice Anyara Emukule (retired) took over the case and heard the next witnesses. Upon the transfer of Justice Emukule to Mombasa Law Courts, I took over the matter and heard the defence of the accused. Therefore in total four (4) witnesses testified in this case on behalf of the prosecution.

PW3 SIMON WAKABA MUCHIRI told the court that on 19/2/2011 he and the deceased left work and went to a bar. The deceased gave the accused who was also in the bar Ksh 10/= and sent her to buy him cigarettes. Over one hour elapsed and the accused had not returned. **PW3** then left to go to a funeral nearby leaving the deceased inside the bar waiting for his cigarettes.

At about 9.00pm **PW3** was on his way back to the bar to collect his friend. He found the deceased lying on the ground bleeding from a stab wound to his chest. The deceased told him that ‘**Njoki**’ had stabbed him. **PW3** collected a blanket and covered the deceased. Police were called and they came and rushed the deceased to hospital but he unfortunately succumbed to his injuries and died. The accused who resided at the Mawingu IDP Camp was arrested and charged with this offence.

At the close of the prosecution case the accused was found to have a case to answer and was placed onto her defence. She gave an unsworn defence in which she denied any and all involvement in the death of the deceased. This court must now analyze the evidence on record and determine whether the charge of murder has been proved beyond reasonable doubt.

The offence of murder is defined by Section 203 of the Penal Code as follows:-

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

Therefore in order to prove the charge the prosecution must tender evidence to prove the following ingredients of the charge beyond reasonable doubt.

- i. Proof of the fact as well as the cause of death of the deceased
- ii. Proof that the deceased met his death due to an unlawful act or omission on the part of the accused.
- iii. Proof that said unlawful act or omission was committed with malice aforethought

In this case the fact of the deceased's death is not in any doubt. **PW3** who was with the deceased on the material day narrated how he found the deceased lying on the ground bleeding profusely from a stab wound to the chest.

PW4 SERGEANT WILLIAM KIMOI was the first officer to arrive at the scene. He confirmed finding the deceased lying on the ground bleeding excessively. **PW2 SAMWEL KARANJA KAMAU** was the deceased's father. He told the court that he attended the autopsy examination and identified the body of his son to the doctor. **PW2** and **PW3** both of who knew the deceased very well identified him as **‘Joseph Kariuki’**.

Evidence regarding the cause of death was tendered by **PW1 DR. MICHAEL GITAU** a medical officer attached at Olkalau District Hospital. **PW1** confirmed having conducted the autopsy on the body of the deceased on 16/2/2011. He noted a stab wound on the right shoulder **PW1** opined that the cause of death was **“Cardio respiratory arrest due to haemorrhage due to stab wound”**. The doctor filled and signed the post-mortem report which is produced as an exhibit in the case **P. Exb1**.

Having proved the fact as well as the cause of death of the deceased, the prosecution must adduce evidence to prove that it was the accused who caused that death.

There was no witness who saw the accused actually stab the deceased in the shoulder **PW3** stated that the accused was drinking in the bar where he and deceased were. He states that the deceased gave accused Ksh 10/= and sent her to buy him cigarettes. Over one hour later when **PW3** left the bar the accused had not yet returned. **PW3** left the deceased in the bar as he went to a nearby funeral. He has no idea when or if the accused eventually returned with the cigarettes.

The next time **PW3** saw the deceased, he was lying on the road was bleeding profusely. **PW3** did not see who had stabbed the deceased. In his evidence **PW3** says that deceased told him that **‘Njoki’** had stabbed him. The deceased only gave one name **‘Njoki’**. He did not elaborate or explain which **‘Njoki’** he was referring to. The court takes judicial notice of the fact that **‘Njoki’** is a common female name in the Kikuyu community. It has not been shown that the accused was the only person named **‘Njoki’** in that Mawingu area. The court cannot rely on this declaration by deceased alone to implicate the accused.

PW4 was the first officer at the scene. He confirms having found deceased lying bleeding on the ground. The deceased apparently did not speak to **PW4** and did not name his attacker. Indeed **PW4** told the court that by the time he arrived the deceased was unable to talk.

In his evidence **PW4** stated that he found a crowd at the scene when he got there **PW4** states

“I rushed to the scene and found a man lying on the ground bleeding excessively. A crowd stood by. I asked who had knifed him but no one offered an answer....”

PW4 says he then went to the nearby bar and found the owner called **‘Wairimu’**. This **‘Wairimu’** informed him that she had heard accused and Njoki quarrelling. The said **‘Wairimu’** did not testify in this

case. It is only she who could confirm which 'Njoki' she was referring to. Failure to call this witness is a serious omission. This part of the testimony of **PW4** amounts to hearsay evidence and cannot be relied upon by the court.

PW4 further says that he shone his torch and saw accused who had on white trousers which were blood-stained. The said blood stained trousers were never produced in court. There is therefore no proof that they existed. Further no government chemist has testified and no analysis report on any clothing has been produced. Again these are serious omissions by the prosecution.

It is a requirement in law that the prosecution prove each and every element of an offence beyond reasonable doubt it is not enough to merely present a string of uncorroborated and instantiated allegations. The court cannot convict on the basis of unproven allegations.

I find that the prosecution case lacks cogency. There is no tangible evidence to show that it was the accused who stabbed and killed the deceased. This case has not been proved to the standard required by law. I therefore enter a verdict of '**Not Guilty**' and I acquit the accused of this charge of murder. The accused is to be set at liberty forthwith unless she is otherwise lawfully held.

Dated in Nakuru this 24th day of February, 2017.

Mr. Njogu for accused.

Maureen A. Odero

Judge