



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL CASE NUMBER 114 OF 2013**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JNM .....ACCUSED**

**JUDGEMENT**

**Introduction**

JNM , hereinafter “the Accused” is charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. Particulars of this offence are that on the 30<sup>th</sup> day of November 2013 at Riruta in Dagoretti within Nairobi County she murdered FMM, hereinafter “the Deceased”. The offence of murder is committed when any person who of malice aforethought causes death of another person by an unlawful act or omission vide Section 203 of the Penal Code. The penalty for murder is death vide Section 204 of the Penal Code.

Malice aforethought is deemed to be established, under Section 206 of the Penal Code, 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.

The law places the burden of proving a criminal charge on the prosecution. The standard of proof must be beyond reasonable doubt that the person charged before the court did an unlawful act or omission that led to the death of the person killed and in so acting or omitting, the accused had the intention as defined in the above circumstances.

**Prosecution evidence**

At the time of his death, the Deceased was married to the Accused. The Deceased worked with

[Particulars withheld] and the Accused worked as a teacher at [Particulars withheld] School situated in Dagoretti Nairobi. They did not have biological children but had adopted a boy known as DM At the time of the incident giving rise to this offence DM was staying with his grandparents in Bungoma. The Deceased and the Accused were the only two people in their house No. [Particulars withheld] in Riruta in a plot owned by one [Particulars withheld]. The plot had 35 units with one gate. Jeremiah Asuku, PW1, (Jeremiah) was guarding the gate that evening of 30<sup>th</sup> November 2013. He received a telephone call from the wife of Clinton Obongo, PW10, (Clinton) at about 11.30pm. The name of Clinton's wife was not given. He was informed that there was someone knocking at the Clintons' door. Jeremiah went to check. He found no one. The Clintons' lived in house No. 19 in the same building as the Manyonges. While at the Clintons' door, Jeremiah noticed that lights were on at the Manyonges' house. He went there. He found the door open and the Accused at the door. She told Jeremiah that she was the one who had been knocking at the Clintons' house. She also told Jeremiah that her husband was sick. Jeremiah entered the house and saw the Deceased lying on the floor covered with a sheet. He asked the Accused what had happened and she told him that the Deceased had fallen on a stool and got injured. Jeremiah called Clinton and informed him. He asked Clinton to go to the house of the Manyonges to help. Clinton used to run a clinic and pharmacy nearby. He was often referred to as a doctor. Clinton told Jeremiah to take the Deceased to hospital. Jeremiah knocked on doors trying to wake other tenants to assist him in taking the Deceased to hospital. No one answered to his knocking. He ran to Clinton's clinic situated about 100 metres away. He found Yuda Otieno Odego, PW2, (Otieno). Otieno was the Administrator of the clinic. Jeremiah asked him to assist. Otieno told him to bring the sick person to the clinic. However, after Jeremiah left, Clinton called Otieno and told him to go and check on the Deceased. Clinton also told him to take with him the stethoscope and the blood pressure monitoring machine. On arrival at the scene Otieno found the Deceased lying on a mattress half way in and half way out of the door. Otieno checked his pulse and took his blood pressure. There was no pulse detected and the blood pressure machine showed no reading. Otieno noted a cut on the Deceased's chest and called Clinton to inform him. Clinton joined Otieno and Jeremiah and confirmed indeed the Deceased showed no signs of life.

The Accused insisted on having the Deceased taken to hospital. Clinton called a taxi operated by Stephen Aggrey Odhiambo, PW4, (Stephen). The Deceased was carried downstairs but instead of being placed on the taxi and taken to hospital, he was placed on the ground and the accused used the same taxi to go to Riruta Police Station to report the matter. Police visited the scene and started their investigations.

CPL Elizabeth Wambui, PW5, (CPL Wambui) testified that on 1<sup>st</sup> December 2013 she was the duty officer at Riruta Police Station in company of PC Too. At 2.30am she received the Accused at the Station. The Accused reported to her that she was at home at 19.30 hours with her husband; that she prepared supper and they ate; that after supper her husband complained of chest pains and that her husband had been bleeding on the chest; that she had administered first aid on her husband but he had died. CPL Wambui booked the report in the Occurrence Book. In company of PC Too she visited the scene. They found the body of the deceased lying on a mattress outside the apartment. It was covered with a bed sheet. Both the mattress and the bed sheet were stained with blood. CPL Wambui testified further that the Accused showed her where she lived on 3<sup>rd</sup> floor. According to CPL Wambui, the house smelt of human blood. The Accused denied in her defence that the house did not smell of blood but of urine due to her husband's bed wetting. CPL Wambui noticed blood stains all over the house including the walls. A red basin in the bathroom had bloody water. The floor of the bathroom had stains of blood. In the table room, on the sofa set and on a stainless steel bowl near the sofa set there were stains of blood. A kitchen knife was found on the floor near the bowl. It had stains of blood on it. A second knife was found in the house. It was smaller in size and had not blood stains. There was a shirt recovered in the house. It had blood stains on it. CPL Wambui told the court that she became suspicious of the accused when she compared the time the accused said she had seen injuries on the deceased, that is 19.30 hours, and the time she reported the matter to the police at 2.30 am. The accused was taken into police custody pending investigations and the body of the deceased was taken to the City Mortuary for preservation.

Dr. Peter Muriuki Ndegwa, PW11, (Dr. Ndegwa) examined the body of the deceased on 6<sup>th</sup> December 2013. It was identified to him as the body of the deceased by Isaac Ndalila Mulumeti, PW6, the brother to deceased and David Manyonge Saratuki, PW7, an uncle. CPL Jairus Namiti from CID Dagoretti was in attendance. Dr. Ndegwa found a penetrating stab wound on the left chest below the clavicle measuring

5cm long. The body of the deceased was very pale. The left lung had been perforated. There was blood on the left cavity. Dr. Ndegwa formed the opinion that the deceased died as a result of haemorrhage due to penetrating stab wound to the chest.

### **Defence case**

The accused testified on oath. She narrated how she spent the day on 30<sup>th</sup> November 2013. She told the court that she married the deceased on 15<sup>th</sup> May 1986 and they lived peacefully. She confirmed they did not have biological children but had adopted DM, a boy who at the time of the incident was living with his grandparents in Bungoma. The accused told the court that she was a music conductor at [Particulars withheld] Church and that on that day her music group of 30 women was to attend a music festival at Shauri Moyo, Nairobi. She left her house at 8.00am after finishing her household chores to go to church at Riruta for practice before leaving for Shauri Moyo. She said that Reverend Ndungu, DW4, prayed for them before they left.

The accused's further evidence is that the group spent the day at Shauri Moyo and left at sunset after receiving two certificates, one for best music conductor. This was awarded to the accused (Defense Exhibit 2). The second award for attaining position one (1) was awarded to [Particulars withheld] Church (Exhibit 3). She testified that they were delayed on the way back due to heavy traffic and that the group members were alighting on their way home save for three women who arrived at [Particulars withheld] Church that evening at about 8.00 to 9.00pm. She said that when she arrived home, she did not find her husband at home. She said that she prepared supper and ate her share and preserved some for her husband. She said that her husband came home about 9.00-10.00 pm and found her preparing her speech for Sunday the following day in respect to the success at Shauri Moyo. She said that the door to their house had not been locked. She said that she heard a commotion and saw her husband fall down with part of his body, the head inside the house and the legs outside the door. She said the husband was holding a bottle of beer. She said she tried to take him inside the house but could not and that she noted that his pulse was weak. She went to Clinton's house to seek help because Clinton had some medical knowledge but Clinton did not respond to her knocking. She returned to her house and found the deceased struggling to breathe. She tried to help him by giving him mouth to mouth resuscitation. She returned to Clinton's house but her knocking got no response. She returned to her house. She decided to call the night guard but met him on the stairs coming up. She took a small mattress (Ex. 7) and placed the deceased on it with the help of Jeremiah. She testified that she covered the deceased with a sheet. She said that after placing the deceased on the mattress she noticed he had an injury on the chest and blood oozing from the injury. She testified that after the attempt by Clinton and Otieno to save her husband she went to report to the police.

She said that the house did not have blood stains as testified by prosecution witnesses; that the house was small and that the utensils were on a stool and that when her husband fell the utensils were strewn all over the place; that she did not attempt to clean the house as she had no reason to do so; that she had not cleaned the knife and that the table cloth she had used to cover her husband got blood stained and she placed it in the basin in the bathroom. She said she did all she could to give her husband first aid. She said that her husband has bed-wetting problem after drinking and this caused the house to smell of urine. She denied that the second knife was recovered from her house. She admitted that they had a difficult relationship with her husband because he used to drink heavily and that lack of a biological child and the bed wetting problem took its toll on her husband and affected his self-esteem. She denied they fought over their problems. She said that lack of a biological child was caused by her husband's low sperm count but she had come to terms with the situation and did not want to degrade herself by straying outside the marriage. The accused produced a letter of good character authored by Pastor Ndungu as Defence Exhibit 4.

DW2 was Pauline Ogani, DW2. She was in the group of women who attended the music festival at Shauri Moyo. Pauline confirmed attending music in company of the accused on 30<sup>th</sup> November 2013 and returning to [Particulars withheld] Church at 8.00pm. DW3, Nicodemus Odhiambo who was a caretaker at [Particulars withheld] plot where deceased and accused lived. Nicodemus told the court that he received news of deceased's death from Jeremiah on 1<sup>st</sup> December 2013. He said he had seen the deceased on 30<sup>th</sup> November 2013 and that he had repaired an extension cable for the deceased on the same day. He said

that the deceased left his house at about 11.00am to 12.00 noon to go to watch football. He said that he left work at 6.00pm and by this time the deceased had not returned home. Pastor Ndungu confirmed praying for the accused and her group before they left to go to Shauri Moyo and later received certificates for best conductor awarded to the accused and for attaining first position for the [Particulars withheld] Choir. Pastor Ndungu had good things to say about the accused. He was a character witness.

### Submissions

At the close of defence case, Mr. Kraido for the Accused, submitted that there is no direct evidence against the accused and that the prosecution is relying on circumstantial evidence; that circumstantial evidence must pass three tests before it can be relied to base a conviction on, namely:

- (i) That the circumstances on which the inference of guilt ought to be based must be cogent;
- (ii) That the circumstances must be of a tendency to unerringly point to the accused; and
- (iii) Taken cumulatively, such circumstances would form a strong chain pointing to the accused.

Counsel submitted that this test must be complete and incapable of any other conclusion. It must be consistent with accused's guilt and inconsistent with her innocence. He submitted that the entire evidence amounts to suspicion that the accused is the one who murdered the deceased. Counsel submitted that the post mortem report did not contain all the information regarding the deceased, for instance it is not contain the height, age, or the time of his death; that it failed to indicate position, nature and dimensions of the injuries; that it failed to determine deceased's digestive system and whether deceased may have been injured elsewhere. He submitted that there is no evidence to prove that the two knives produced in court were used to inflict the injuries on the deceased. It was further submitted that the Accused's clothes were not examined to determine whether any blood may have splashed on them. Defence Counsel relied on **Sawe v. Republic Criminal Appeal No. 2 of 2002 (reported in 2003 eKLR)**.

The prosecution counsel submitted that evidence places the accused at the scene of the crime and that she was the only person with the deceased in their house that evening; that the accused stated that the deceased had fallen on a stool yet the injuries found on his chest were stab wounds; that their relationship had been sore because the accused had been found at a different time prior to this incident quarrelling with the deceased and holding a knife; that the house had blood stains and that the deceased's shirt had no tear indicating that the accused was stabbed at home; that if the accused had come home at night she would have been spotted by PW1 and that no bottle of beer was found inside the house after police visited the scene. Counsel urged the court to find that the prosecution has proved the case beyond reasonable doubt and convict the accused.

### Determination

The duty of the court in a murder trial is to determine whether the prosecution has proved beyond reasonable doubt the two main ingredients of the offence, namely *mens rea* and *actus reus*. *Mens rea* is Latin for "**guilty mind**". It is defined by Black's Law Dictionary 9<sup>th</sup> Edition as "**The state of mind that the prosecution, to secure a conviction, must prove that an accused had when committing the crime.**" *Actus reus* is Latin for "**guilty act**". It is defined by the same Dictionary as "**The wrongful deed that comprises the physical components of a crime and that generally must be coupled with mens rea to establish criminal liability.**" Put broadly, the prosecution must prove that death of the deceased occurred; that death was caused by an unlawful act of omission by the accused person and that the accused had malice aforethought as defined under Section 206 of the Penal Code.

The evidence on record shows that the body of the deceased was removed from his residence sometimes in the morning of 1<sup>st</sup> December 2013. It was taken to the City Mortuary. Dr. Ndegwa examined the body after the same had been identified to him by relatives, I N M, brother and DM, uncle to deceased with CPKL Namiti from Riruta Police Station in attendance. The doctor found penetrating stab wound on the left infraclavicular area measuring 5 cm long. The left lung was perforated and there was blood

accumulation on the left side of the chest. Dr. Ndegwa concluded that the deceased died due to haemorrhage due to penetrating stab wound to the chest. Defence Counsel raised issues with the doctor's finding terming them as shallow and they were influenced by what the police had recorded on page one (1) of the Report.

I have considered the submissions and the evidence on record. I am of the view that the doctor did what he was required to do. He did not implicate the accused in his findings. He examined the body as requested. It is true that the doctor did not take samples from the stomach for analysis. I believe he was not asked to do so. The doctor's findings show the cause of death was due to penetrating chest wound. The body was pale an indication that the deceased had lost a lot of blood. The blood sample drawn from the body of the deceased was compared with blood stains found on the table cloth (Ex.13) and sandal (Ex.8). DNA profiles from the two items matched the deceased's blood sample. I have analysed this evidence and I am satisfied that the evidence adduced by the prosecution is sufficient to prove and it does so prove beyond reasonable doubt that the deceased died as a result of an unlawful act (stabbing). The wound was deep and had perforated the left lung.

In order to determine the identity of the person who stabbed the deceased causing him fatal stab wound, this court must now turn to the available evidence. The evidence by the prosecution against the accused person is circumstantial. I agree with the defence that there is no direct evidence against the accused. Circumstantial evidence, according to Black's Law Dictionary 9<sup>th</sup> Edition is (a) "***Evidence based on inference and not on personal knowledge or observation***" and (b) "***All evidence that is not given by eye witness testimony.***" Without belaboring the point it is worth noting that circumstantial evidence is as good as direct evidence. In recognition of this fact, it was stated as follows in **Taylor Weaver and Donovan [1928] 21 Cr. App. R. 20:**

***"Circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which by intensified examination is capable of proving proposition with the accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial."***

However, for a conviction to arise basing on circumstantial evidence, certain criterion must be met. This criterion is captured in numerous authorities including **Sawe v Republic** (supra) cited by the defence. In this case the Court of Appeal stated thus:

***".....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 hypothesis than that of his guilt. There must be no 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 of innocence is on the prosecution and remains there."***

In the **Sawe case** (supra) the appellant was acquitted by the Court of Appeal. The circumstances of that case as considered by the Court are that on the fateful night two administration policemen were guarding the house where the appellant and her husband, the deceased, were sleeping. Fire broke out in that house about 5.30am as testified by neighbours. This is about the same time the guards left the premises. The Court was of the view that the two guards were not excluded from being persons who might have started the fire or for that matter any intruder might have done so. The Court then stated that if that was the case, then the evidence did not irresistibly point to the appellant to the exclusion of all others within the meaning of **R v Kipkering arap Koske & Another 16 EACA 135** where it was held, *inter alia*, that:-

***"In order to justify the inference of guilt, the inculpatory fact must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt"***.

The prosecution evidence establishes that the Manyonges lived on either 3<sup>rd</sup> or 4<sup>th</sup> floor of a building owned by one Mr. Ritho. Their neighbours, the Clintons, lived on the same floor. The apartment block had one gate manned by a guard. Jeremiah was the night guard on 30<sup>th</sup> November 2013. He reported on

duty at 6.00pm. This is what Jeremiah told the court. It was also confirmed by Nicodemus Odhiambo, DW3, who told the court that he was the caretaker at the apartment block owned by Mr. Ritho.

I have carefully analysed the evidence of Jeremiah. He was on duty from 6.00pm on 30<sup>th</sup> November 2013. He did not see the Accused or the Deceased come home that evening. This in my view means that they had already arrived home by the time he reported on duty. Jeremiah was manning the gate and would have seen the two come home that evening. The Accused told the court that the remaining members of the Riruta Baptist Church choir arrived at the church at about 8.00pm and 9.00pm. She did not state exactly when she arrived home. She testified that she did not find her husband at home when she arrived. She said he came home around 9.00pm and 10.00pm. It is obvious that this timing has some discrepancies. If she got home latest at 9.00pm, prepared supper and ate her portion reserving some for her husband and then started preparing the report of the music festival, this must have taken her longer than she claims. It is on record that when she reported to CPL Wambui of Riruta Police Station at 2.30am, she told her that she had been home with her husband at 19.30pm, cooked supper and served it; that after eating the Deceased complained of chest pains and that she noted that he was bleeding on the chest and she administered first aid. The report to CPL Wambui does not tally with the Accused's evidence in court.

As to when she and her husband arrived home, I find no reason to doubt the evidence of Jeremiah that he did not see them that day. This means that by the time he reported on duty at 6.00pm both the Accused and the Deceased were already at home. It is therefore not true that the Accused arrived home after 9.00pm or that the Deceased arrived home between 9.00pm and 10.00pm.

What happened inside the Manyonge's house is not clear and as stated above this court must resort to circumstantial evidence. This court also has on record the evidence of the Accused given under oath. According to her, she was seated writing a speech to present in church the following day when her husband arrived home. Her evidence in reference to the arrival of her husband is captured as follows:

***“He came alone to the house. The door to our house was not locked as usual and I thought he must have been around. I did not lock the door. It was ajar..... When he came I was seated writing a speech about our success that day. I heard some commotion and given that the door was not locked, I saw him fall part of the body, head, was inside the house and legs outside the door. He was holding a bottle of beer. I tried to bring him inside the house. I could not. His pulse was weak. I rushed to my neighbour who has medical knowledge. I knew him as Dr. Clinton. He was on 4<sup>th</sup> floor. He was on same floor as me. I knocked at his door. His lights were on. He did not respond to my knock. I returned to my house. I found my husband struggling to breath and I gave him mouth to mouth resuscitation. I went back to Clinton's house. There was no response. I returned to my house. The third time I was going downstairs to call night guard. I met him coming upstairs communicating with Dr. Clinton on phone. The floor was ice cold and my husband was freezing. I took a small mattress and put it on the floor and requested night guard to help me place my husband on it. He helped me.”***

From the above evidence the Accused sought help from the Clintons twice. This is not what Clinton stated. From this evidence the Accused met Jeremiah coming up the stairs. This is not what Jeremiah told the court. He testified that as he was coming from the Clintons he saw lights on at the Accused's house and went there. He found the Accused at her door and was shown the Deceased inside the house. From the Accused's evidence, the Deceased did not enter the house but fell at the door. If this is the case, the bloodstains on the walls of their house, in the basin in the bathroom, on the sofa set and the floor of the bathroom, on the silver bowl and the Deceased's shirt are not explained. From this evidence, it would appear that it did not take long between the Deceased falling down and Jeremiah arriving at the scene. It would also appear that the Accused with help of Jeremiah placed the Deceased on the mattress at the time Jeremiah arrived. In the evidence of Jeremiah, he went to Clinton's clinic first before returning to the scene and helping the Accused with placing the Deceased on the mattress. The commotion referred to by the Accused is not explained. I am alive to the legal principle that the Accused has not duty to prove her innocence. But I am unable to understand what she meant by stating that she heard a commotion and saw her husband fall especially because she told the court that her husband came home alone.

I am further puzzled by the evidence that the Deceased came home holding a bottle of beer. What happened to the bottle? Did it break on impact after the Deceased fell if the Accused's evidence is to be believed? There is no mention by any witness of broken pieces of a bottle at the scene or even the bottle itself. If by 19.30pm both the Accused and the Deceased were home as reported by the accused to CPL Wambui, why did the Accused take so long to seek help?

These are questions whose answers can only be found in the hypothesis based on circumstantial evidence that the Accused is the one, to the exclusion of anyone else, who killed her husband. They were the only two people in their house that evening. This will explain the presence of blood stains all over the house as testified, and the Accused's contracting evidence on various issues. For instance, when asked by Jeremiah what had happened to the Deceased, the Accused told him that the Deceased had fallen on a stool and hurt himself. When Jeremiah sought to know more about this matter, the Accused became hostile. To CPL Wambui, the Accused reported that the Deceased has complained of chest pains after they had eaten supper. Unita Wanjala, PW9, (Unita) a neighbour who lived opposite the Manyonges, asked the Accused what had happened to the Deceased and she was told that the Deceased had knocked himself on a stool and got injured. As I have stated above, alive to the legal principle that the accused has no duty to prove her innocence, her evidence in court and the evidence of other witnesses on how she conducted herself at the time of this incident leaves a lot unexplained. The evidence does not add up. Her witnesses were character witnesses. Their evidence does not explain what happened after the Accused arrived at home, again being alive that she has no duty to prove her innocence.

As submitted by the Defence and taking into account **Sawe v. Republic** (supra) cited by the defence and other authorities including **Musili Tulo v Republic [2014] eKLR; GMI v Republic [2013] eKLR; R. v. Kipkering Arap Koske & Another, 16 EACA 135** and **Musoke v. R [1958] EA 715**), circumstantial evidence must satisfy the following principles

***(i) The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;***

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

***(iii) The circumstances taken cumulatively should 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.***

***(iv) It is also necessary before drawing the inference of accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference.***

I have considered all the evidence and rival submissions. In answer to the question, who killed the Deceased, I find that circumstantial evidence point to the Accused. I have no other explanation given that they were the only two people in the house. Even assuming that they got in later than 6.00pm and perhaps Jeremiah was not at the gate, there is no evidence that the Deceased was wounded elsewhere. He had sustained a deep stab wound and his left lung was perforated. I doubt he could have walked up the stairs with that kind of injury. There was no evidence of blood stains on the stairs or corridors. All the stains of blood were inside their house. There was evidence of some cleaning in the house going by the bloody water in the basin in the bathroom. The blood on the walls, sofa set, bathroom floor and silver bowl indicate one thing, the incident took long before help was sought and must have been busy perhaps attempting to clean up the bloodstains. Was the Accused attempting to conceal the offence? I will not put it past her. Instead of looking for help immediately, she took time hence the evidence of blood on the areas mentioned. The Deceased had bled a lot and his body was pale. This is an indication that help was not sought early enough. The Deceased had no shirt on indicating that either it was removed or he was relaxing at home without the shirt. And certainly the deep stab wound was not caused by falling on a stool!

What was the motive for this murder? Section 8 (1) Evidence Act (Cap. 80 Laws of Kenya) states that any act is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. There is evidence that the deceased and the accused did not have a peaceful relationship. Jeremiah told the court that:

***“J and F did not have a peaceful relationship. I had found them fighting at another time (sic). I was with Clinton. I found her holding a knife and I snatched the knife from her. They fought often and F had told me the environment was hostile.”***

Clinton on his part testified on the same issue as follows:

***“The deceased and the accused used to quarrel. There was a time I had heard a commotion and when I went there I found accused holding a knife and deceased sitting down. They were arguing. Accused was explaining how deceased was not paying bills and buying food. She showed me receipts of her having paid rent. I cautioned them this was crossing the line to a criminal matter. I took the knife and gave it to the security officer. It was a year before this issue arose.”***

On the same issue David Manyonge Saratuki told the court in examination in chief that ***“The family had not been living in peace. Deceased used to come to me and I know they used to have quarrels and injuries.”*** In cross examination, this witness, a relative of the deceased, told the court that ***“the deceased told me of disagreements and injuries. I know none of this was reported to the police.”***

This evidence is relevant to this case. The fact that the accused and the deceased did not have a peaceful relationship, either due to deceased’s drinking habits or his alleged failure to pay bills or due to his alleged bedwetting tendencies and lack of a biological child due low sperm count on the part of the deceased, establishes motive. In ***Libambula v. Republic (2003) KLR 683*** the Court of Appeal defined motive as that which exists for every voluntary act and stated that motive is often proved by the conduct of a person; that motive becomes an important element in the chain of presumptive proof and that where the case rests on purely circumstantial evidence motive may be drawn from the facts though proof of motive is not essential to prove a crime.

In my view, although motive is not one of the ingredients of murder, it is relevant to provide the reason behind certain act or behavior. I find motive proved in this case.

Having considered all the evidence, the law and the cited authorities I find that I cannot escape from the conclusion that the Accused, for reasons only known to her and perhaps due to their domestic issues, caused the death of her husband. She painted him as a man of low esteem due to his drunkenness, a man who used to wet his bed and who had caused them childlessness due to his low sperm count. She painted herself as a person of good character and morals, a patient and understanding wife who could not degrade herself by straying from the marriage in a bid to get a baby. In my view and going by the evidence on record she killed her husband in cold blood.

It is my finding that the circumstances from which an inference of accused’s guilt is sought to be drawn have been cogently and firmly established in this case; that these circumstances are of a definite tendency unerringly pointing towards the guilt of the Accused and that the circumstances 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. I also find that there are no other co-existing circumstances that would weaken or destroy the inference of accused’s guilt. The offence of murder against the Accused person, JNM, has been proved beyond reasonable doubt. A stab wound to the chest, executed so deeply that it punctured the left lung can only be inflicted by a person with one intention, to cause the death or grievous harm to the victim. This coupled with the conduct of the Accused in not seeking medical help as soon as possible points to the fact that death was intended. Consequently, I enter conviction against the Accused for the offence of murder. Orders shall issue accordingly.

**Dated, signed and delivered this 30<sup>th</sup> day of May 2017.**

**S. N. MUTUKU**

**JUDGE**