



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NANYUKI

CRIMINAL APPEAL NO. 18 OF 2016

REPUBLIC.....PROSECUTOR

versus

LOKULA ACHUKA alias HASSAN.....RESPONDENT

JUDGMENT

1. **LOKULA ACHUKA alias HASSAN** (hereinafter referred to as Hassan) was **charged with the murder of MONICA IMONI (deceased) contrary to section 203 as read with section 204 of the Penal Code.** The deceased was the accused's wife. Section 203 of the Penal Code provides:-

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

From the provisions of that section it becomes clear that the prosecution must prove the following:-

i. Proof of death of the deceased;

ii. That the death of the deceased resulted from the unlawful act or omission on the part of the accused person; and

iii. That the unlawful act or omission was committed with malice aforethought.

2. The prosecution proved that the deceased died on 30th June 2016 at Thome Location in Laikipia West Sub-County, Laikipia County and that it was Hassan who caused her death. This was through a number of witnesses. **PAULINE NATHU LEPURI (PW 1)** was a nearby neighbour to the accused and the deceased. On 30th June 2016 PW 1 saw the accused, whom he knew as Hassan, chasing the deceased. This was at 10 a.m. PW 1 noticed that Hassan had a knife as he chased the deceased. PW 1 was at about 20 metres away. She saw the deceased run into the 'shamba' where the deceased grandmother known as Mary Apokor (PW 2) was. PW 1 saw Hassan hit PW 2 with a club (rungu) and PW 2 fell down. PW 1 then saw Hassan stab the deceased on the back and on the neck. Deceased on being stabbed, according to PW 1, she fell down and did not get up again. PW 1 identified the knife which she saw Hassan use to stab the deceased as the one before court.

3. **MARY APOKOR, PW 2**, was grandmother of the deceased. She said that the deceased was married to Hassan. She further stated that on 30th June 2016 at about 9 a.m. she was in the company of the deceased's sister whom she referred to as Manjau. They were working in the shamba. PW 2 saw Hassan

chasing the deceased. The deceased ran and hid behind PW 2. Hassan then stabbed the deceased on her back and then hit her (PW 2) with a rungu. As a consequence PW 2 fell down. Ten minutes later when PW 2 regained consciousness she saw the deceased on the ground.

4. **AGNES MARION PW 3** was sister to the deceased. She said on 30th June 2016 at 10 a.m. she was digging the samba in the company of PW 2. She said PW 2 was her grandmother. She saw Hassan chase the deceased from their home up to where PW 3 and PW 2 were digging. PW 3 saw Hassan hit PW 2. PW 3 then saw Hassan stab the deceased once, at the back and at the neck. PW 3 identified the knife Hassan used to stab the deceased as the one before court. She also noted that the knife before court still had blood at its tip.

5. **JOSEPH EBENYO EKIRU, PW 4**, was on 30th June 2016 at 10 a.m. at a shopping centre called "Duka Mbili". While there he heard screams. He then saw people running. He went into the direction they were running. PW 4 was then carried by motor cycle rider, **Josphat Edungi Longor PW 5**. The two were informed that someone who had injured another was running away. The two gave chase and caught up with Hassan. It was then that PW 4 and 5 realised that it was Hassan, a person they both knew. PW 4 stated that when they asked Hassan why he was running Hassan replied:-

"I have killed."

When they asked him why he had killed Hassan replied again:-

"I have killed."

PW 4 and PW 5 then took Hassan to an Administration Police (A.P.) camp and he was arrested.

6. Administration Police **Benjamin Leparsoore (PW 6)** was posted at the AP camp. On 30th June 2016 at 10.40 a.m. three people brought Hassan to him on allegations that he had killed someone. One of those people handed him a knife which had blood on it. That, that was the knife before court.

7. **Dr. Miringu** who carried out post-mortem of the deceased's body found that she suffered a stab wound on the left side of the neck and a stab wound on back which led to massive haemorrhage.

8. The defence offered by Hassan, that he was not at the scene of murder and that he did not commit the murder is rejected in the light of prosecution's evidence.

9. The prosecution, as stated before proved the death of the deceased. The evidence of PW 1, PW 2, and PW 3 was directed at the attack by Hassan to the deceased. The post-mortem report proved the death of the deceased. Accordingly that evidence proved two of the ingredients of murder under section 203 of the Penal Code. That is the deceased died and her death was caused by the unlawful act, the stabbing, by Hassan. Hassan was known by all the witnesses who witnessed the attack.

10. **Section 206** of the penal Code defined malice aforethought, the third ingredient, as:-

"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 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."

11. Hassan chased the deceased from their home up to the shamba where the deceased's grandmother and deceased's sister were. The deceased tried to shield herself from the expected attack by Hassan, by hiding behind her grandmother, but that was to no avail. Hassan hit the grandmother then stabbed the deceased twice. There is no doubt that Hassan intended to cause grievous harm to the deceased. He undoubtedly knew that the stabbing of the deceased with a knife would result in grievous harm.

12. In this court view, contrary to the submissions made by defence counsel, the prosecution's evidence overwhelmingly proved the guilt of Hassan. It is by his own act which caused the death of the deceased. The prosecution's evidence was water tight. It left no doubt who was responsible for the death of the deceased. The verdict of guilt, in the light of that evidence, is inevitable. **Accordingly this court finds LOKULA ACHUKA alias HASSAN guilty of murder of MONICA IMONI deceased. He is convicted as charged.**

DATED AND DELIVERED AT NANYUKI THIS 28TH DAY OF JUNE 2017.

MARY KASANGO

JUDGE

CORAM:

Before Justice Mary Kasango

Court Assistant – Njue/Mariastella

Accused: Lokula Achuka alias Hassan

For Accused

For the State:

Language

COURT

Judgment delivered in open court.

MARY KASANGO

JUDGE