



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 9 OF 2015**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**LOINGISA KURARU LORUIYA.....ACCUSED**

**JUDGMENT**

1. **LOINGISA KURARU LORUIYA** is charged with the **Offence of murder Contrary to Section 203 as read with 204 of the Penal Code**. He pleaded not guilty. Prosecution called a total of 6 witnesses.

2. The prosecution is obliged to prove three elements in order to prove the charge of murder beyond reasonable doubt. They are:

**(i) The death and cause of death of the deceased,**

**(ii) That the accused committed the unlawful act which resulted in the death of the deceased;  
and**

**(iii) That the accused had malice aforethought.**

It is important to state that the burden of proving the case against the accused remains always upon the prosecution. This is what was held in the case: **REPUBLIC – V- DAVID RUO NYAMBURA & 4 OTHERS**. The court in that case held:

***“It is our cardinal principle of Law that in a Criminal Case the Legal onus is always on the prosecution to prove the guilt of an accused person, and the standard of proof is proof beyond reasonable doubt. The burden of proof therefore lies on the prosecution through out to prove the guilt of an accused”.***

3. The prosecution’s case was to the effect that the accused on 25<sup>th</sup> August 2013 passed John Rumu Amatoni [P W 1] (John) as he, John, was herding goats. The accused asked John where his wife the deceased was. John said in evidence that he had seen the accused a few months prior to that date and knew him as an in law of Kinyaga. John then responded by telling the accused that his wife the deceased was in their house. John was then 20 meters away from his house. Accused went to John’s house and fifteen minutes later John heard just one scream which he recognised to be his deceased wife’s scream. On hearing that scream he ran to his house. John then said in evidence in chief:

***“I ran home. I reached home and I met him (points to accused) Kuraru coming out of the third gate holding a knife which had blood.***

***... He was holding the knife in a stabling manner as he passed me.”***

4. John entered his house after accused passed him and found his deceased wife Mariastela Ekai on the ground. He noticed she had a stab wound on her neck. John on seeing his wife bleeding on the ground of their house went out to find the accused still in his compound. On inquiring why he had killed the deceased the accused retorted:

***“Let’s go and you can kill me at my in laws”.***

John followed the accused upto the home of his in laws called Kinyaga and at that time hit the accused at his elbow which caused the accused to fall and release his knife. John took the knife and tied the accused with a rope.

5. Anthony Toti Romo [P W 3] (Anthony) is the son of John and of his deceased wife. On the material date at 6p.m. Anthony while he was about 100 meters away he heard someone calling out. He went there and found it was his father John and the accused. The two were quarrelling. Anthony noticed the accused had a bloody knife in his hand. It was still day time.

John told Anthony that the accused had killed his mother. John asked Anthony to go into his house and confirm that his mother was dead. Anthony entered his parent’s bedroom where upon he found his mother lying on the ground. Anthony confirmed she was dead. He noticed that his mother had a cut on her neck at the vein. Anthony said that his father John telephoned his boss asking his boss to get the police. The police officers arrived at 10.00p.m from Umande police station. The deceased body was taken by the police and the accused was arrested. Anthony was able to identify the knife he saw the accused hold as the one before court.

6. C I Kibwana Mwatasha was the officer incharge of police station (O C S) at Umande police station. On 25<sup>th</sup> August 2013 he received information that someone had been murdered in Chumvi area. He in company of P C Rono and a police driver they went to Chumvi area. At the scene he met John who showed them the accused. The police officers recovered the knife and also went to John’s house where they found the deceased’s body lying in a pool of blood. C I Kibwana noticed that the deceased had a stab wound on the left side of the neck and also a cut on the shoulder and the elbow. The police officers re-arrested the accused. C I Kibwana confirmed that the knife before court was the knife they recovered at the scene.

7. From C I Kibwana’s investigation he was able to tell the court that the accused and the deceased were in the same place drinking changaa (local brew). That the accused suspected the deceased took his wallet as she left. That the accused informed the police officer that when he went to inquire about his wallet the deceased tried to attack him and he used the knife to protect himself.

8. Anne Wangechi Nderitu a government analyst confirmed a knife and blood sample of the deceased were received at the Government Chemist for analysis. She confirmed after carrying out analysis she found that D N A profile generated from the blood stains on the knife and the D N A profile generated from the deceased blood were the same.

9. The doctor who carried out the post mortem Doctor Gitaka. He found that the deceased died from severe blood loss secondary to severed jugular vein

10. The accused gave unsworn in defence. The accused in his defence denied knowledge of the offence before court. He stated:

***“I live in Chumvi. I do not work, I do not know what brought me before court.***

***I never did anything regarding this case. I never did anything. I do not know anything. I was arrested by police men but I do not remember where I was arrested. Maristela Ekai (deceased). I do not know her”.***

The accused in addition denied killing the deceased and denied that the knife produced before court was his knife.

### **ANALYSIS AND DETERMINATION**

11. The offence of murder is under **Section 203 of Cap 63**. That Section provides:

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

Prosecution, as seen from that Section is required to prove beyond reasonable doubt, three ingredients that is:

- **The death of the deceased;**
- **That LOINGISA KURARU LORUIYA committed the unlawful act which caused the deceased’s death; and**
- **That LOINGISA KURARU LORUIYA had malice aforethought.**

12. The first ingredient was proved by John and Anthony at the scene of the crime and subsequently by Doctor Gitaka who conducted the post mortem. Prosecution therefore proved that first ingredient of the death of the deceased.

13. The second ingredient was proved by John and his evidence was corroborated by his son Anthony. John was bringing in the animals he had been herding when the accused asked him where the deceased was. John informed accused that the deceased was at their home. John saw accused go into their home and within a short while he heard the deceased scream. On rushing there he saw accused coming out of their home with a bloody knife and the deceased lying on the ground bleeding. Anthony also heard the scream of deceased and heard his father John quarrelling with accused. He too saw accused holding a bloody knife.

14. The accused response to that evidence was to deny being at the scene, deny killing the deceased and deny owning the bloody knife produced to court.

15. The accused was placed at the house where the deceased was found dead by very clear unshaken evidence of John and Anthony. Having been so found at the scene the accused ought to have given his explanation of what happened rather than denying even being there. This is what was stated by the court when discussing Section III of the Evidence Act in the case:

#### **REPUBLIC – VERSUS- NICHOLAS NGUGI BANGWA [2015] EKLR Viz:**

***III.(1) When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any exception or exemption from, or qualification to, the operation of the law creating the offence with which he is charged and the burden of proving any fact especially within the knowledge of such person is upon him:***

***Provided that such burden shall be deemed to be discharged if the court is satisfied by evidence by the prosecuting, whether in cross –examination or otherwise, that such circumstances or facts exist:***

***Provided further that the person accused shall be entitled to be acquitted of the offence with which he is charged if the court is satisfied that the evidence given by either the prosecution or the defence creates a reasonable doubt as to the guilt of the accused person in respect of that offence”.***

Further when referring to Section 119 of the Evidence Act the court stated:

***“119. The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case”.***

***Having been placed at the scene of deceased house as the last person to be with deceased before she died, the accused had a duty to give an explanation of how either the deceased died or of how they parted company. The accused in his statement in defence put forward an alibi as his defence. That does not meet the statutory requirement of Sections 111(1) and 119 of the Evidence Act. Therefore the rebuttable presumption created by these two Sections that having been the last person seen with the deceased before she died the accused knew how she died, and that it is in his interest to give an explanation.”***

16. I had the opportunity to see and to hear the witnesses testify and both John and Anthony came across to me as truthful witnesses. Indeed they had no reason to fabricate evidence against the accused. Anthony even stated in evidence that he did not know the accused before the fateful day. John said he knew the accused as an in law of Kinyaga. There was no basis why both John and Anthony would lie about accused having a bloody knife which knife was confirmed by government analyst to have deceased’s blood. It follows that the second ingredient was well met by the prosecution that is it was the accused who committed the unlawful act that resulted in the death of deceased .

17. The Accused in inflicting such serious injury to the deceased had intention to cause death or grievous harm. Those are the ingredients of malice aforethought under **Section 206 of the Penal Code**. It follow that prosecution has also met the third ingredient.

18. In the light of the prosecution’s evidence which placed the accused at the scene of murder, where the deceased was murdered the defence offered by the accused is obviously a lie and is rejected.

19. The prosecution’s evidence is not weakened by the failure of the prosecution to call the doctor who extracted the deceased blood sample which was taken to the government chemist. Although prosecution’s evidence is circumstantial I find the said evidence is incompatible with the innocence of the accused. That evidence is in capable of explanation upon any other reasonable hypothesis than that of the accused guilt. See the case **VENANZIO NZIVO – V- REPUBLIC CA No. 81 of 2003**.

20. The prosecution has proved beyond reasonable doubt that it was the accused who was criminally responsible for the death of the deceased. **For the above reason the judgment of this court is that LOINGISA KURARU LORUIYA is guilty of the murder of Mariastela Ekai deceased. I hereby convict him as charged.**

***Dated and Delivered at Nanyuki this 20<sup>th</sup> JUNE 2017***

MARY KASANGO

**JUDGE**

**Coram**

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

Accused: Loingisa Kuraru Loruiya

For accused.....

For state: .....

Language .....

**COURT**

Judgment delivered in open court

MARY KASANGO

**JUDGE**