



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL CASE NO. 47 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**FLORENCE WAMBUI NGURU ALIAS NDUNGE WA KOCHI.....ACCUSED**

**JUDGEMENT**

1. The accused **FLORENCE WAMBUI NGURU** alias **NDUNGE WA KOCHI** was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code** the particulars of which were that on 24<sup>th</sup> day of April, 2014 at Mathare Area 3C in Starehe District within Nairobi County murdered **DAVID MASESI MBUVI**.
2. She pleaded not guilty and to prove its case the prosecution called a total of seven (7) witnesses and when put on her defence, the accused gave unsworn statement in her defence.

**PROSECUTION CASE**

3. The prosecution case was that on 24/4/2014 the deceased was called by PW4 who together with the accused were engaged in the business of street manicure and pedicure hence the accused nick name “WA KOCHI” to assist him with some of his client when a dispute arose between the accused and the deceased leading to the accused fatally stabbing the deceased.
4. It was **PW4 PETER MUSYOKA MWANIA’S** evidence that he gave the deceased some of his customers to work on when in the process he was surprised that there arose a dispute and a fight between the deceased and the accused over the business which dispute was settled. The accused left the site and later on came back with a knife which she stabbed the deceased with. He testified that he knew the accused very well and that immediately the deceased was stabbed he left the place since he was scared of being attacked by the accused and went and called the father of the deceased. When he returned to the scene he found that the deceased had been taken away from the scene.
5. **PW1 OUMA CHARLES OSIR** corroborated the evidence of PW4 and stated that he was working at the scene unblocking sewer line when he heard people quarreling over money. He went to the place of the quarrel and was told that the dispute was over some Kshs.20/=. He mediated over the dispute and went back to his place of work. He later saw the accused running carrying something in the hand and one of the men who was doing nails running away with the accused running towards him. He then heard the deceased shout “***I have been killed***” which forced him to go to where they were and found the deceased holding his stomach towards the waist. He decided to run after the accused who outran him.
6. It was his evidence that he then decided to go back to his place of work having sought for assistance from people to take the deceased to hospital and after about a half an hour assistance came from the motor

vehicle of Blue House. It was his evidence that he had seen the accused properly and was able to identify her since he had earlier mediated between her and the deceased and had seen her before the said date passing by where he was working. He further stated that after offering to testify against the accused had received threats.

7. Under cross examination he stated that he had received threats from many people who did not want him to testify against the accused. He stated that he was not at the spot where the deceased was stabbed and only responded when he heard the deceased say that he had been killed and saw the accused running away from the scene. He further stated that two ladies responded to his plea to assist the deceased and it is them who called for the motor vehicle which took the deceased to the hospital and after two days he heard that the deceased had died.

**8. PW2 STEPHEN MBUVI MASESE**, the father of the deceased confirmed that he had been called by PW4 who informed him that his son had been stabbed by the accused whose name he gave as **ANNA NDUNGE**. It was his further evidence that when he got to the scene he was told that the deceased had been stabbed by the accused and had been taken to hospital. He was further told that the deceased had done nails for the accused who refused to pay him Kshs.20/=. On 5/5/2014 he together with **PW3 JOSPHAT NJOROGE NGATIA** identified the body of the deceased to **PW7 DR. DOROTHY NJERU** who performed post mortem and formed an opinion that the cause of death was massive blood loss as a result of stabbed wound on the thigh.

**9. PW5 SGT. STEPHEN KIMELI KWAMBAY** testified that on 4/6/2014 was on patrol when they received information that the accused had been seen in the area, they arrested her and when he interrogated her she admitted that she had killed somebody. He was able to identify the accused in the dock.

**10. PW6** (recorded as 7 in the proceedings) **Cpl Peter Mwangangi** the investigating officer stated on oath that he recorded statements from witnesses who mentioned the accused as Ndunge wa Koch who went underground until 5/6/2014 when she was arrested and booked and subsequently charged with the offence. In the process of interrogating her, the accused disclosed that she was involved in a fight with the deceased who allegedly used a stool to hit her and when it missed her she took a knife and while they were struggling the deceased stabbed himself with the said knife. He produced P3 form confirming that the accused was fit to stand trial. Under cross examination he confirmed that they were unable to recover the murder weapon. He further stated that the accused knew what she had done since immediately after the alleged commission she went into hiding.

### **DEFENCE CASE.**

11. When put on her defence the accused gave unsworn statement and stated that on 24/4/2014 she went to her place of work at 8.00 a.m. up to 5.00 p.m. and that on 4/6/2014 while at the shop buying milk she was arrested by two police officers who took her to the police station who forced her to sign a statement but she declined. She stated that she had nothing to do with the offence and did not know any of the witnesses who testified before the court against her.

### **ANALYSIS AND DETERMINATION**

12. For the prosecution to sustain a conviction on a charge of murder, the following ingredients must be proved beyond reasonable doubt.

- a. The fact and the cause of death.
- b. Proof that the deceased met his death as a result of an unlawful act or omission on the part of the accused person.
- c. Proof that the said unlawful act or omission was committed with malice aforethought.

13. The fact and the cause of the death of the deceased herein is not in dispute. PW7( 8 in the proceedings) Dr. Njeru performed post mortem examination on the body of the deceased and produced the report as PExh No. 3 confirming that the deceased had died as a result of severe loss of blood (exsanguinations) due to stabbed wound on the thigh. **PW2 STEPHEN MBUVI MASESI** the father of the deceased and **PW3 JOSEPH NJOROGI NGATIA** attended the postmortem examination and identified the body of the deceased. It is therefore clear to the court and as submitted by the advocate for the accused that the prosecution has proved the fact and the cause of death of the deceased.

14. On whether the said death was as a result of unlawful act or omission on the part of the accused, the evidence of **PW1 OUMA CHARLES OSIR** is very clear that there had been an earlier dispute between the accused and the deceased over some Kshs.20/= which he mediated upon and thereafter went back to his place of work only to see the accused running towards the deceased carrying something in her hand. He shortly thereafter heard the deceased shout that he had been killed and upon going to the scene found the deceased holding his stomach and the accused running away from the scene. It was his evidence that the deceased who was earlier in good status was at that time bleeding from the waist.

15. I found PW1 a credible and truthful witness. He was able to identify the accused positively at the scene since he had earlier mediated between the dispute between her and the deceased and as per his evidence he had been seeing the accused at the area. The evidence of PW1 was corroborated in material particulars by **PW4 PETER MUSYOKA MWANIA** who had invited the deceased to assist him with his customers and whose testimony was that he knew the accused well and saw her attack the deceased though he did not see the murder weapon. I am satisfied that the accused person was positively put at the scene and there was no mistaken identity of the same since it was during daytime. I therefore dismiss her claim that on the material time she was not at the scene.

16. There is also on record the evidence of **PW6 CPL PETER MWANGANGI** the investigating officer in this matter who testified that the accused was well known in the area as “*Ndunge wa Kochi*” and that upon the commission of the offence the same went into hiding and upon her arrest she admitted that she was involved in a fight with the deceased but denied stabbing the same stating that the deceased stabbed herself. I therefore find and hold that the prosecution proved beyond reasonable doubt that the death of the deceased was caused by an unlawful act on the part of the accused.

17. The final issue for determination is whether the said unlawful act was committed with malice aforethought. As submitted by the defence malice aforethought was held by Odero J in the case of **REPUBLIC v MOHAMMED DADI KOKANE alias GABO & 7 OTHERS [2014] eKLR** as follows:-

*“The mens rea for murder is described as ‘malice aforethought’. Section 206 of the Penal Code defines ‘malice aforethought’ as follows. “Malice aforethought shall be deemed to be established by evidence proving any one or more on 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.....”*

18. It is clear to my mind and I find that the accused had an intention to cause the death or do grievous harm and indeed caused the death of the deceased. There is evidence before the court which stands unchallenged that there was an earlier fight between the accused and the deceased and when the same was

mediated upon and resolved by PW1, the accused went away only to come with the murder weapon. The accused further retracted her earlier statement that the deceased stabbed himself. There is also the conduct of the accused who immediately after the commission of the offence went into hiding thereby indicating a guilty mind.

19. In the final analysis I am satisfied and find that the prosecution has proved beyond any reasonable doubt all the ingredients of the offence of murder as charged and therefore find the accused guilty of the murder of DAVID MASESI MBUVI on the 24<sup>th</sup> day of April, 2014 as charged and hereby convict the same accordingly.

**DATED, SIGNED and DELIVERED at Nairobi this 21<sup>st</sup> day of September, 2017.**

.....

**J. WAKIAGA**

**JUDGE**

**In the presence of:-**

*Mrs. Kinoti for the State*

*Mr. Shimaka for the Accused*

*Accused present*

*Tabitha court clerk*