



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CRIMINAL CASE NO. 20 OF 2012**

REPUBLIC ..... RESPONDENT

VERSUS

L. M. M. .... APPELLANT

**JUDGMENT**

The Accused **L. M. M.** hereinafter referred to as the Accused is charged with the offence of murder contrary to section 203 as read with section 204 of the penal code.

The particulars are that on the 23rd day of April 2012 at [particulars withheld] village within Taita-Taveta County she murdered **H. S. A.**

The Accused was examined by Dr. Mwangombe consultant psychiatrist who found her fit to plead.

In this case it is not denied that it is the Accused who inflicted the fatal wounds on the Deceased on the 23rd April, 2012.

It is common ground that the Deceased and the Accused were lovers and had been staying together for sometime.

A misunderstanding arose on the day in question and the Accused by the use of a panga (which was produced as exhibit No. I) proceeded to cut him severally and killed him. In her unsworn statement she admits that on the day in question he had arrived home at around 6:00 am and attempted to embrace her in front of her child while outside the house. He pushed her into the house with the intention of having sexual intercourse with her. He armed himself with a panga and they had a struggle. She managed to get hold of it and cut him in self-defence.

She further told the Court that the Deceased had become a nuisance and was slaughtering and consuming her chicken and goats without her consent and upon being asked why he was doing so, he would beat her up.

Section 203 of the penal code provides for the offence of murder thus,

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

Malice aforethought is defined thus,

**“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 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 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.”**

To ascertain whether the ingredients of murder have been proved in this case I **deem** it necessary to examine and analyse the medical evidence adduced before the Court.

Dr. Hesborne Ndianga (PW5) performed the postmortem examination on the body of the Deceased. He found multiple cut wounds with regular margins. Deep wounds noted. Multiple lacerations back of neck coalescing to form one large open wound 20cm x 3cm. There was severing of muscles and tissues. There were fractures of the bones of the neck from c3 to c6. The spinal cord was severed. The left shoulder had lacerations 15 cms long exposing the left shoulder joint. The left forearm and the distal half had a transverse laceration. On the wrist there was a laceration with fracture and dislocation 10cms long. This was a defence lesion. On the wrist and forearm there were deep cuts fracturing the radii transversely three transverse lacerations at the distal forearm.

The Doctor further found that the spinal cord was severed and column had fractures. He formed the opinion that the cause of death was severe hemorrhage, respiratory failure or distress as a result of severed neuro tissues at the neck region. The court has also had the occasion to view the photographs produced in court as exhibit No. 5 which are in tandem with the postmortem report exhibit No. 2.

They all go to show the Accused's Singular and determined intention to inflict maximum injuries on the Deceased. The Accused herself has not reported or complained of having sustained any injuries during the incident so as to warrant the vicious attack she visited on the Deceased. Hers was not a one stab or cut affair but a sustained repetition of several cuts on the Deceased hands shoulders and neck culminating to severance of the spinal column and death.

The Accused may be a struggling single mother as she alleges, the Deceased could have slaughtered her chicken and goat but this was not provocation enough commensurate with her vicious attack or slaughter of her former lover. There was clearly malice aforethought. She had the intention to cause death of the deceased and she did indeed cause that death.

The defence of provocation is not available to her as the alleged slaughter of her chicken and goat had not happened at the time and there was enough time to cool her passion.

I find the state to have proved its case beyond reasonable doubt and I convict the Accused under section 322 of the Criminal Procedure Code.

Judgment dated and delivered in open Court this **19th** day of **June, 2013**.

**In the presence of:-**

Learned State Counsel Mr. Jami

Learned Counsel for the Accused Mr. Mushelle

Court Clerk Musundi

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**M. MUYA**

**JUDGE**

**Mr. Jami:**

I dont have her records. She may be treated as a first offender. I Urge the Court to consider the brutality of attack.

**Mr. Mushelle:**

On behalf of my client the Accused is indeed a first offender. She is a Single mother. This was an unfortunate incident where the deceased kept on visiting the Accused house even though the love had come to an end. This infuriated my client. She has been in custody for almost two years. Her kids have suffered. This is an offence which is serious and Sentence severe but the Court has discretion in Sentencing. It is not automatic that death Sentence can be passed. We ask for non custodial Sentence.

**Sentencing notes:**

The brutality of the attack was noted in the Courts judgment. The Accused is a first offender. She is Sentenced to 20 years imprisonment.

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**M. MUYA**

**JUDGE**

**19TH JUNE, 2013**