



**Republic v Muchanga (Criminal Case 1 of 2020)
[2025] KEHC 845 (KLR) (20 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 845 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL CASE 1 OF 2020
GL NZIOKA, J
JANUARY 20, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

KEZIAH WAMBUI MUCHANGA ACCUSED

JUDGMENT

1. The accused was arraigned before court charged with the offence of murder contrary to section 203 as read together with section 204 of the [Penal Code](#). The particulars of the offence are that on the 13th day of December 2019 at Kagui village, Karagita Sub-location in Naivasha Sub-County within Nakuru County she murdered Faith Nyambura.
2. The charges were led to the accused and she pleaded not guilty. The case proceeded to full hearing. The prosecution case is that the deceased aged about six (6) months old was the accused's biological child. That she was staying with the accused who was cohabiting with (PW1) Charles Maina Njeri
3. According to the evidence of (PW2), Mary Wangui Mwangi who was the accused's neighbour, the accused did not "love the child" and neglected her. That she would leave the deceased all alone in the house without food and on several occasions (PW2) Wangui would cook and feed the deceased.
4. That on most occasions, the accused would leave the house and return late while drunk and that, on the material date, the accused left the house at 6.00 a.m. and returned at about 2:00 p.m. That (PW2) Wangui went to the accused's house as she had not seen her return home and found the deceased lying on the floor covered by a blanket.
5. PW 2 stated that she did not hear the deceased cry but noticed that she had foam in the mouth. That she called (PW3) Daniel Wanyoike and informed him of what she had discovered and eventually they confirmed that the child was dead and reported the matter to the police station.



6. That the accused was traced drunk in the bar and arrested while the deceased's body was taken to the mortuary. Subsequently, the post mortem was done by PW4 Dr. Ngulungu who established that, the deceased died as a result of starvation and at the conclusion of the investigations, the accused was charged accordingly.
7. At the close of the prosecution case, the accused was placed on her defence. She testified to the effect that, she left the deceased in the house well fed and returned to find her dead. She denied the prosecution evidence that she was always drunk and neglected the child on several occasions.
8. At the conclusion of the case, both parties filed their respective submissions. The prosecution submitted that the case was based on pure circumstantial evidence as no-one saw the accused kill the deceased. However, the facts point to the accused as she abandoned the child without food, and knew the end result would be loss of the child due to starvation.
9. The prosecution relied on the case of *Abamed Abolfathi Mohammed & Another v Republic* (2018) eKLR that dealt with the threshold of circumstantial evidence. It was submitted that, the accused through "negligence commission and omission" caused the death of the deceased, and was the last person who was with the deceased.
10. Further reference was placed on the case of; *Stephen Haruna v The Attorney General of the Federation* (2010) 1 i LAW/CA/A/86/C/2009 to argue that based on the last seen doctrine, the law presumes that the person last seen with the deceased bears full responsibility. The prosecution argued that, all the ingredients of murder have been proved.
11. However, in the response submissions, the defence argued that there is no circumstantial evidence to support the conviction the accused and relied on the case of; *Abmed Abolfathi (supra)*. That the accused testified that she fed the child and left it with (PW2) Wangui. Further the doctor stated that the cause of death was starvation which had persisted for long.
12. Further (PW2) Wangui also saw the child and failed to do something about her condition and therefore she is the one crucified. That similarly (PW1) Charles Maina Njeri who was living with deceased also had the responsibility over the child.
13. The defence also argued that the last seen doctrine does not apply. That the accused had no motivation to kill the child as she loved her deceased. Finally the defence argued that, the offence of infanticide under section 210 of the *Penal Code* may have sufficed.
14. At the conclusion of the trial I find that the main issue to determine is whether the offence of murder has been proved against the accused. The offence is provided for under section 203 as follows: -

" Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder."
15. Pursuant to the afore provision and several court decisions the elements of the offence of murder is settled. That the prosecution must prove: -
 - a. the death of the deceased occurred and the cause of that death;
 - b. that the appellant committed the unlawful act which caused the death of the deceased; and
 - c. that the appellant had harboured malice aforethought.
16. The afore elements were well discussed in the case(s) of; *Joseph Githua Njuguna v Republic* (2016) eKLR and *Milton Kabulit & 4 others v Republic* [2015] eKLR.



17. In the light of the above, I note from the evidence herein that as regards the occurrence of death of the victim herein, the same is conceded by both parties and confirmed by the evidence of all the prosecution witnesses and post mortem report to the effect that deceased died of starvation.
18. The key question is whether the accused murdered the deceased and if so, whether she had malice aforethought. The provisions of section 206 of the Penal Code gives the circumstances when malice aforethought is deemed to exist and states that: -
- “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 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.”
19. In the instant matter, analysis of the evidence reveals that the accused used to neglect the deceased. (PW1) Charles Maina Njeri testified that the accused often left the deceased unattended and that he learnt from the neighbours that the deceased was never fed and would cry all day. That when he gave the accused money to take care of the child, the accused would go to drink and that he warned her several times over neglect of the deceased child but she would not hear.
20. In addition, (PW2) Mary Wangui Mwangi testified that the accused “did not love” the deceased child and that the deceased did not live well. Further that, the accused did not use to cook in the house “so the child had problems”. That, the accused would leave the house at 8:00 a.m. and return at about 11:00 a.m. Furthermore, on the date the child was found dead, the accused left at 6:00 a.m. and returned at 2:00 p.m. when the child was dead. It suffices to note that the evidence of these two witnesses is corroborated by the finding of the doctor that, the child died of starvation.
21. The court notes from the submissions of the defence, the argument that, even PW1 and PW2 had the duty to take care of the child. However, with due respect, the primary responsible for the welfare of a child belongs to the parent(s) and the accused cannot therefore abdicate her responsibility and expect to be exonerate from blame for the death of the deceased.
22. Be that as it were, I note that, there is no direct evidence that, the accused killed the deceased. The evidence reveals neglect of the deceased leading to her death. The accused preferred her “drink” against the welfare of the deceased. Her omission to take care of the deceased lead to her death.
23. In my considered opinion this is a case of manslaughter. Manslaughter is described as a residual category of homicide that does not meet the criteria of murder. The ingredients thereof are as follows and analysed based on the evidence herein: -
- a. Death – there has to be proof that the victim is dead. That is proved herein.



- b. Unlawful act- the killing must be unlawful, and be proved to have been dangerous or involved a risk of injury. It is in evidence herein the deceased did not die as a result of a natural case beyond human control, and failure to feed her was risky leading to her death.
 - c. Culpable negligence- the killing must be the result of an act or omission that was negligent. The prosecution case as summarised here strongly confirmed the deceased died as a result of the negligence of the accused who simply failed to feed her.
 - d. Provocation- the killing may be the result of provocation that caused the accused to lose self-control. There is no evidence that the accused was provoked by anyone or anything.
24. Furthermore, the prosecution must prove the accused's actions were unlawful and that, a reasonable person would have realized that risk of harm to the victim. The prosecution has proved the same.
25. Consequently I find that, the accused did not have malice aforethought. As a result, I find her guilty of manslaughter and convict her of the same accordingly.

DATED, DELIVERED, AND SIGNED ON 20TH THIS DAY OF JANUARY 2025.

GRACE L. NZIOKA

JUDGE

In the presence of:

Ms. Chepkonga for the State

Mr. Karanja for the Accused

Accused present virtually

Mr. Komen: Court-Assistant

