



REPUBLIC OF KENYA



**Republic v Mensire (Criminal Case E019 of 2021)
[2025] KEHC 1999 (KLR) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1999 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL CASE E019 OF 2021
WA OKWANY, J
FEBRUARY 13, 2025**

BETWEEN

THE REPUBLIC PROSECUTOR

AND

JAPHET MOSAISI MENSIRE ACCUSED

JUDGMENT

1. Japhet Mosaisi Mensire is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the charge are that on diverse dates between 8th day of December 2019 and 16th day of December 2019 at Morara Village, Charachani Sub-location, Keera Location in Nyamira South Sub-county within Nyamira County, jointly with others not before court, murdered Kevin Ainda Nyaribari.
2. He pleaded not guilty to the offence and a trial was conducted in which the prosecution called a total of seven (7) witnesses.
3. A summary of the prosecution's case was as follows: -
4. PW1, Alice Nyaboke Nyaribari, the deceased's mother, testified that the Accused went to her home on 8th December 2019 over an allegation that the deceased had raped his goat. She claimed that the Accused threatened that he would have done something shocking to the deceased had he found him at home. She testified that the Accused demanded compensation in the sum of Kshs. 7,000/= for the rape of his goat but that she did not have the money at the time. She stated that the deceased disappeared from home on that day only for his decomposing body to be discovered in a nearby thicket several days later. She claimed that the Accused's son chased away the deceased while armed with a panga after the goat rape incident.
5. PW2, Samuel Machuki, testified that the Accused reported that the deceased had raped his goat and threatened that he would do something bad to the deceased.



6. PW3, Erastus Mwangi Obare, the brother of PW1, testified that he made efforts to reconcile the parties over the goat dispute and that it was agreed that the deceased's family would compensate the Accused for the damage done to his goat. He confirmed that the deceased's decomposing body was recovered from a thicket one week later.
7. PW4, Ernest Okeri Osumo, testified that he, on 8th December 2019, saw the Accused's son, chasing the deceased while armed with a panga.
8. PW5, Kennedy Mocheche Kebihu, witnessed the retrieval of the deceased's body from the thicket and identified the body during the post mortem examination.
9. PW6, Dr. Ombati Timothy Mokuu, performed the post mortem examination of the body of the deceased on 27th December 2019. He stated that the cause of death was asphyxia secondary to strangulation with multiple bodily injuries. He produced the post mortem report as P. Exhibit 1.
10. PW7, PC Erick Langat investigated the offence and visited the scene where the deceased's lifeless body was recovered. He stated that the deceased's body had decomposed and had a sisal rope tied around the neck. He added that the deceased's right foot was amputated at the knee while the left leg had bite wound injuries.

Defence Case

11. When placed on his defence, the Accused testified that he did not kill or threaten the deceased. He stated that he has four (4) sons and that PW4 did not identify which one of his sons had chased the deceased while armed with a panga. He confirmed that he went to the deceased's home to complain about the rape of his goat and that he demanded for compensation.

Analysis and Findings

12. I have considered all the evidence presented in this case as set out hereinabove together with the Accused's submissions. I find that the main issue for determination is whether the prosecution has proved the following facts, beyond reasonable doubt: -
 - a. The death of the deceased;
 - b. Whether the Accused caused the death, and;
 - c. Whether the Accused he was actuated by malice.
13. Lord Denning, addressed the standard of proof in criminal cases in *Miller v. Ministry of Pensions*, [1947] 2 ALL ER 372 where he held thus: -

“That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course it is possible, but not in the least probable, the case is proved beyond reasonable doubt, but nothing short of that will suffice.”
14. Sections 203 and 204 of the [Penal Code](#) require the prosecution to prove, beyond reasonable doubt, that the Accused, by an unlawful act or omission, caused the death of the deceased through malice aforethought. The Sections stipulate as follows: -



203. Murder
- Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
204. Punishment of murder
- Any person convicted of murder shall be sentenced to death.
15. In the case of *Joseph Kimani Njau v. R* (2014) eKLR the Court dealt with what constitutes the offence of murder thus: -
- “Before an act can be murder, it must be aimed at someone and in addition, it must be an act committed with one of the following intentions, the test of which is always subjective to the actual subject;
- i. The intention to cause death;
 - ii. The intention to cause grievous bodily harm;
 - iii. Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from his acts, and commits those acts deliberately and without lawful excuse with the intention to expose a potential victim to that risk as the result of those acts.
- It does not matter in such circumstances whether the accused desires those consequences to ensue or not...”

Death of the Deceased

16. It was not disputed that the deceased died of strangulation. The Post Mortem Report produced as P Exhibit 1 revealed that the deceased died of asphyxia secondary to strangulation with multiple bodily injury.

Whether the Accused committed the unlawful act which caused the death of the deceased

17. I find that none of the prosecution witnesses presented any evidence to link the Accused to the death of the deceased. The only nexus between the deceased and the Accused was the claim that the Accused complained that the deceased had raped his goat and the allegation that he threatened to do something shocking to the deceased.
18. My finding is that the mere fact that the Accused was angry with the deceased following the rape of his goat does not connote that he actualized the alleged threat. PW4 claimed that he saw the Accused’s son, whom he did not name, chasing the deceased while armed with a panga. I find that the claim, by PW4, was neither here nor there as he did not name or identify the Accused’s alleged son. I am of the view that even assuming that the Accused’s unnamed son chased the deceased while armed with a panga, the Accused cannot be held responsible for the actions of his alleged son.
19. I am not satisfied that the prosecution proved the Accused’s involvement in the death of the deceased to the required standard.

Malice Aforethought

20. Malice aforethought is defined in section 206 of the *Penal Code* in the following terms:



- a. An intention to cause death or to do grievous harm to any person whether such person is the person actually killed or not.
 - b. Knowledge that the act or omission causing death will cause the death of or grievous harm to some person, whether such person is the person 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 be caused.
 - c. An intent to commit a felony.
 - d. An intention to facilitate the escape from custody of a person who has committed a felony.
21. In the present case, I have already found that the prosecution did not prove the Accused's involvement in the act of Murder (actus reus), to the required standard. I therefore find that the issue of whether the Accused acted with malice aforethought does not arise.
22. For the reasons stated in this judgment, I do not find the Accused guilty of the offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code* and I accordingly acquit the Accused person, Japhet Mosaisi Mensire, of the said charge.
23. I direct that the Accused be set at liberty forthwith unless he is otherwise lawfully held.
24. It is so ordered.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT NYAMIRA VIA MICROSOFT TEAMS THIS 13TH DAY OF FEBRUARY 2025.

W. A. OKWANY

JUDGE

