



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Nyaga (Criminal Case 1 of 2018)
[2025] KEHC 1483 (KLR) (6 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1483 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL CASE 1 OF 2018
RM MWONGO, J
FEBRUARY 6, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

LUCY KARIMI NYAGA ACCUSED

JUDGMENT

1. The accused person is charged with Murder Contrary to Section 203 as read with Section 204 of the Kenyan *Penal Code*. The Particulars are that on 21st September, 2013 at Mutithi Location, Kirinyaga West within Kirinyaaga County Lucy Karimi Nyaga Murdered Robert Njagi Nyaga.
2. The brief facts are that on 22nd September, 2013, the deceased was found having been killed inside his house at Mutithi village. The police visited the scene. They found deceased's body with the hands tied at the back. There were no visible injuries though blood was oozing from both the nose and mouth. Nothing had been stolen from the house.
3. A Public Inquest under Inquest No.11 of 2016 before the Wanguru Senior Principal Magistrate Court was conducted and it ordered the arrest of the accused Lucy Karimi Nyaga under Section 387(3) of the *Criminal Procedure Code*. This case was commenced on that basis.

Prosecution Case

4. PW1 Loise Wawira Nyaga testified that she was able to visit the scene of crime after being informed of the deceased death. She confirmed the injuries occasioned on the deceased. She recalled that sometime in the year 2013 after having received information of her missing father - the deceased- she had to accompany her mother the accused to try and reconcile them. This was after rumours that her mother - Lucy Karimi Nyaga had hired some men to eliminate her father Robert Njagi Nyaga, the deceased.



5. She stated that on 14th July 2013 the deceased convened a meeting at Ngurubani Town between the accused and the hit men she had hired to eliminate him. This was in response to the deceased ordering the accused to pack and leave. She had no doubt that her mother must have been involved in the demise of the deceased.
6. In cross examination, she stated that the relationship between her father and the accused (second wife) was not good.
7. PW2 Joseph Mwai Mugambi stated that he was 89 years of age. Without indicating the date, he stated that sometime in the month of August, 2013 he was at Mutithi with the deceased when one Chege Thuita indicated to them that some people had been hired to kill the deceased. They went to the pastor's place to speak about the matter but the pastor refused to talk in his presence. They then went to Ngurubani and hired a room and paid Kshs.1,000 for the deceased to hide then took the deceased's shirt and phone to his 2nd wife. The accused person, demanded for money but none was given.
8. On that night the house of the deceased was stormed into and rice stolen. Later on, PW2 learned that the deceased had been murdered and upon visiting his home, he found the deceased dead and saw one cabbage and one shoe in his house. He also noted that the deceased had injuries on his head. Together with other people, they went to Wanguru Police Station and reported the matter. The Police officers visited the scene and took the body to Kibugi Funeral Home.
9. PW3 Ephraim Njagi Nyaga testified that the deceased is his father. He confirmed that he visited the scene and noted in detail the injuries the deceased had. He had an injury on the head and the body laid on a sisal sack and on his jacket.
10. PW4 Phamenas Muchira Kaburungo testified that he stays at Ngurubani. He testified that he had been invited for some talks in a hotel whose name he couldn't recall. He found the deceased, and a pastor there but did not know the two other people. That the pastor told him that those people had been hired for Kshs.100,000/- to kill the deceased and upon completion of the mission they would avail the keys and the mobile phone of the deceased. One person went for the money from the accused as a set up but he came without money. They parted ways and went home and slept. Later on, he heard that the deceased had been killed.
11. PW5 Alfred Maina Kamenya the Chief of Thiba location testified that the accused Lucy Karimi Nyaga went to him trying to stop the funeral of the deceased on 30th September, 2013. He then advised her to write a letter to the OCS Wanguru but confirmed that the burial went on nevertheless.
12. PW6 Morris Mureithi Nyaga testified that he was a form 2 student but presently a vehicle mechanic. He testified that he lived with his parents - the deceased and the accused - but they lived in separate houses. He stated that he stumbled on the father's body while going to get keys from him.
13. PW6 narrated that on getting to the deceased's house, he was shocked to see the door open, and noted that all this happened after his mother (the accused) had gone back home. At that time, he was living with a caretaker. He reported to the neighbours about the state of his father, the deceased.
14. PW7 Dr. Karomo is a Pathologist who works at Mt. Kenya Hospital Kerugoya. He testified that he is the one who conducted the post-mortem of the deceased. The body was identified by one Loise Nyaaga and Joseph Mugambi who indicated that the body was found with its head bleeding. On examining the body of the deceased, it had bruises on his head, blood oozing from the mouth and the upper lip was bleeding.



15. PW7 stated that after performing the postmortem, he formed the opinion that the cause of death was due to severe head injury with a blunt object.
16. PW8 Bishop Stephen Chege testified that he had worked at Faith End Times Ministry for the last 20 years. He testified that he is a Pastor of that Church situated at Makutano. He stated that he knows the accused person because she was his village mate. He testified that he also knew the deceased, and that he hails from Mutithi and the deceased used to stay in a rented house there.
17. He stated that on the 13/07/2013 he was at his church in Makutano when he was approached by several people who informed him of the plot to kill the deceased. He stated he did not know the deceased's wife. It was on that day when he learnt the killers were allegedly to be paid Kshs.100,000. They held a meeting with other people to see how they could assist the deceased. The meeting was to be held at Nemus Hotel in Mwea. They organized a set up and asked the deceased to give out his keys, mobile phone and keys to one Mathew Mugo and Mwai to go and purport to the accused that they had killed the deceased.
18. Ultimately, the deceased refused to give out his keys citing that there were a lot of things in his house. However, he gave out the phone and the shirt. When they took the said items to the accused, the accused refused to give them money. Later on, he learnt that the home of the deceased had been raided, rice stolen and that the deceased had been killed.
19. PW9 Mathew Mugo Macharia stated that he is a businessman in Ngurubani. He was introduced to the accused by a lady called Monica who used to arrange for tomato pickers when he went to buy them. As they were harvesting tomatoes, the lady Monica, told him she had an issue of a woman who had a job of "removing" her husband for mistreating her. The woman was the accused.
20. He testified that the accused hired him to kill her husband for Kshs.100,000. He told his bishop about the plan. The accused gave him a photo of the deceased called Robert, for identification. He recorded the accused's plan to kill her husband on his phone but lost the phone. About 3 months later, he heard that the deceased had been killed.
21. PW10 No.237811 C.I Loise Wanjiru who at the time was stationed at Wanguru DCI, testified that on 22nd September, 2013 a report of murder was made to one Chief Inspector Kimeto by one Loyce Wawira, Ephraim Nyaga and Joseph Mwai. They reported that the body was discovered by a 13-year-old MN who used to live in a different house.
22. She testified that they reported that the deceased was staying alone, and was found lying dead on the corridor of his house. Blood was oozing from his mouth. Further, that the O.C.S Wanguru in company of other officers visited the scene and removed the body to the Funeral home.
23. She stated that it took two years and a complaint before investigations were done. Thereafter, statements were recorded in 2016, two years after the incident. She detailed the conspiracy that emerged from the statements given, to murder the deceased and the money that was to be paid for the hit job. She said that she tried to get a connection between Justus Kibanga and Mathew Mugo with the deceased, but could not find any, except circumstantial evidence.
24. On cross-examination, she stated that it took more than two years for some witnesses to record their statements. She admitted that she did not know if the accused participated in the deceased's death. She further admitted that the investigations were done three (3) years after the deceased's death.
25. The accused gave a sworn statement without any witnesses. She stated that she did not kill the deceased, that he was her husband; that they lived in separate houses in Unit 4 Muthithi.



26. She testified that she went home but he was not in his house. She found the door unlocked, so she went to Mutithi Police Station and was given a letter to take to the Chief. She went and told the chief that the deceased's door was not locked yet it had valuables. After that she received a call from the deceased who told her he was chasing her away and she should not go home.
27. A car had been availed and she was told to enter it. There were women in the car, and she was driven to her parent's home in Chuka. A job as a house help was found for her in Kamiti. Later, she received a call and was told the deceased was found dead in the house. She called the chief to ask if the information was true and he told her to see him.
28. In cross-examination, she confirmed that she lived in Unit 2 whilst the deceased lived in Unit 4; and that her son MN who was then 11-12 years old lived with the deceased before his death.
29. The parties filed written submissions which I have carefully considered.

Issues for Determination

30. As submitted by the parties, Section 203 of the General Code places the burden on the prosecution to prove the three elements of murder which are the issues for determination herein, namely:
 - a. That the death of the deceased occurred.
 - b. That the death occurred through the unlawful act or omission of the accused which caused the death.
 - c. That the accused acted with malice aforethought.

These elements were re-affirmed in *Anthony Ndegwa Ngari V.R [2014] eKLR*.

Analysis and Determination

31. In order to complete an understanding of the Legal Framework for the offence of murder, it was submitted that Section 206 of the *Penal Code* stipulates that:

“Malice aforethought shall be deemed to be established by evidence proving:

- a. An intention to cause the death or grievous harm.
- b. Knowledge that the act or omission causing death will probably cause death of or grievous harm to the same person.
- c. An intention to commit a felony”

Death of the deceased

32. There is no dispute concerning the death of the deceased. PW7 Dr. Karomo confirmed that he performed a postmortem of the deceased body. The deceased was identified by Loise Nyaga (PW1) and Joseph Mugambi. He stated that the cause of death was severe head injury due to assault with a blunt object.

Whether the death occurred through the unlawful act of the accused.

33. The Prosecution submissions surrounds circumstantial evidence to the effect that PW2 Joseph Mwai Mugambi testified that the deceased had told him of a conspiracy to kill him; that the conspirators were



the deceased's wife Lucy Nyaga, the accused who had offered Kshs.100,000/- to 'remove' the deceased; that she gave Kshs.70,000/- to Pastor Chege.

34. The Prosecution stated in submissions that:

“We submit that the evidence tendered so far places the accused persons at the scene of the crime squarely (sic squarely) and the death of the deceased was due to the wrongful act of the accused persons.”

35. This of course is incorrect or there was no evidence tendered at all that indicated who was involved or the actual killing of the deceased. Instead, the prosecution witnesses alleged the existence of a conspiracy to murder the deceased.

36. On the other hand, the defendant submitted that PW2, PW3 and PW4 testified that there was an alleged conspiracy to murder the deceased; that Bishop Chege PW7 said he had been informed of the plot to kill the deceased on being paid Kshs.100,000/-; that there was no clarity as to who had paid the alleged money; that none of the witnesses effected the alleged conspiracy and that no one confirmed actually receiving the alleged money.

37. The defence submissions concluded that there was a crucial failure of the Prosecution to investigate the matter and failure to call critical witnesses. Reliance was placed on *Bukenya and Others v. Uganda* [1972] EA 549 where it was held:

“The prosecution must make available all witnesses necessary to establish the truth even if their evidence may be inconsistent. Where the evidence called is barely adequate, the Court may infer that the evidence of the uncalled witnesses would have tendered to be adverse to the prosecution...

The Prosecution's burden in regard to witnesses is to call witnesses who are sufficient to establish a fact...

The issue is whether those called are sufficient to aid the Court to establish the truth, whether the evidence is favourable to the prosecution or not.”

38. I agree with the defence that the evidence of the witnesses availed has not linked the accused with the killing of the deceased. Most of them relied on hearsay evidence. For example, none of the witnesses was able to give ascertainable testimony as to who gave the “hit money”; to whom it was given; exactly how much was given; who or whether any of the alleged hit men conducted the killing.

39. PW9 who testified that the accused hired him to kill the deceased for Kshs.100,000/-. He then said she gave the deceased's photo on his phone but all that he did was to tell his bishop about the plan, and that he lost the phone in which the plan was contained.

Whether the accused acted with malice aforethought:

40. Malice Aforethought was defined in the case of *Republic v Juma Kituko Mwambegu* [2020] as follows:

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

- 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 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”

41. The prosecution submitted that it led evidence to prove that the accused had wanted to have the deceased killed; that she hired people and offered to pay them Kshs.100,000 in case they succeeded to kill the deceased. Further, that PW4, PW8 and PW9 testified that they were aware of the accused plan to kill the deceased. They proceeded to aid the deceased to foil the accused plan of killing him. However, he was killed three months later.
42. There is however no evidence that it was the alleged plan that led to the death of the deceased. No evidential connection has been made between such alleged plan and the death of the deceased.

Conclusion and Disposition

43. In light of the foregoing, I hereby find that the prosecution has not proved that the accused murdered the deceased as charged. The circumstantial evidence of the conspiracy to kill is too weak to connect the deceased’s death to the alleged conspiracy.

Accordingly, I hereby acquit the accused of the charge herein. She shall be set free forthwith unless otherwise lawfully held.

44. Orders accordingly.

DELIVERED VIRTUALLY AT KERUGOYA HIGH COURT THIS 6TH DAY OF FEBRUARY, 2025.

R. MWONGO

JUDGE

Delivered in the presence of:

- 1. Magara for the Accused
- 2. Mamba for the State
- 3. Francis Munyao - Court Assistant

