



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Kimani (Criminal Case 15 of 2023)
[2025] KEHC 4148 (KLR) (Crim) (2 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4148 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
CRIMINAL CASE 15 OF 2023**

KW KIARIE, J

APRIL 2, 2025

BETWEEN

REPUBLIC PROSECUTOR

AND

BONFACE FUNDI KIMANI ACCUSED

JUDGMENT

1. Bonface Fundi Kimani is charged with two counts of murder contrary to section 203 as read with section 204 of the *Penal Code*.
2. The particulars of the offence are that on the 3rd day of December 2017, at Kariamu Trading Centre, in Ol Kalou, within Nyandarua County, he unlawfully murdered Joyce Njeri Fundi.
3. The prosecution's case is that the accused and the deceased were husband and wife. They disagreed and fought. The accused fatally injured the deceased.
4. Bonface Fundi Kimani, the accused, argued that he was fighting with a stranger. When the deceased intervened, she was hit on the head by the stranger.
5. The issues for determination are:
 - a. Whether the stranger hit the deceased; and if not
 - b. Whether the accused was the one who fatally hit her; and
 - c. Whether the offence of murder was proved against the accused.
6. There are two competing accounts regarding how the deceased sustained injuries. The prosecution argued that before the report of the deceased's injuries, the police had received a complaint of malicious



- damage and a threat to kill. Before they could respond, another report came in. Upon their arrival at the scene, they found the deceased, who had been injured, while the accused had faced mob injustice. He was wounded and in bad condition. This is the gist of the evidence of Corporal Mutiso Nzioka (PW6).
7. Corporal Mutiso Nzioka (PW6) added that the accused and the deceased had separated when the incident occurred. The accused had gone to the deceased's house at the time of the incident.
 8. Police constable Bernard (PW5) testified that he received a report of malicious damage to property and a threat to kill. While proceeding to the scene, some people informed them that the accused had attacked his wife and ran away. A mob pursued him, arrested and thoroughly beat him. They recovered an axe handle, a knife and a piece of timber under the bed of the deceased. Unfortunately, these items were not taken for forensic examination. They have very little value, if any.
 9. The post-mortem report that was produced by Dr. Titus Ngulungu (PW4) indicates that the deceased sustained a deep cut wound on the right parietal area.
 10. Boniface Fundi Kimani, the accused, stated that he had accompanied his wife to purchase medicine for their daughter, Freshia. When his wife went to buy breakfast items, he was left with their daughter. He conversed with his friend Karanja and realized their daughter was crossing the road. He saw an oncoming motorcycle and rushed towards the child. Unfortunately, a motorcycle hit him. When he stood up, he inquired if the motorcyclist was injured. Instead of answering him, the motorcyclist began to beat him. The two then engaged in a fistfight. His wife returned, and at this point, the motorcyclist picked up a piece of wood and, intending to hit him, struck her with it.
 11. The version proffered by the accused cannot be accurate. This is evidenced by the fact that a report had been made earlier concerning him, and before it could be acted upon, the police officers found the accused at the mercy of the mob that pursued him as he fled after injuring the deceased. Secondly, those present, including his friend Karanja, could not have turned against him after the alleged cyclist injured his wife. The logical reaction would have been for the mob to target the motorcyclist, not the accused, if his account of events were accurate.
 12. I, therefore, find that the prosecution has proved to the required standards that the accused caused the death of the deceased.
 13. To convict for murder based on the evidence on record, the prosecution must prove the existence of malice aforethought. In Black's Law Dictionary, 10th Edition, malice aforethought is defined as:

The requisite mental state for common-law murder, encompassing any one of the following (1) the intent to kill (2) the intent to inflict grievous bodily harm (3) extremely reckless difference to the value of human life (the so-called "abandoned and malignant heart"), or (4) the intent to commit a dangerous felony (which leads to culpability under the felony-murder rule).
 14. Section 206 of the *Penal Code* gives instances when malice aforethought may be proved. It provides:

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.

15. The deceased suffered a head injury, which caused her demise. Unfortunately, there is no evidence regarding what transpired between the two. I conclude that the prosecution has not established the offence of murder against the accused. Acquit him of this offence. However, I find that the offence of manslaughter, contrary to section 205 of the *Penal Code*, has been proven against him beyond a reasonable doubt. I find him guilty and convict him accordingly.

DELIVERED AND SIGNED AT NYANDARUA THIS 2ND DAY OF APRIL 2025

KIARIE WAWERU KIARIE

JUDGE

