



**Republic v Baraza (Criminal Case 2 of 2018)
[2024] KEHC 283 (KLR) (12 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 283 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL CASE 2 OF 2018
GMA DULU, J
JANUARY 12, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

FRIDAY BARAZA ACCUSED

JUDGMENT

1. The accused person herein stands charged with murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the offence are that on December 27, 2017 at around 9:00 pm at Makueni Police Station within Makueni sub county of Makueni County murdered Inspector Dennis Wanjala.
2. He has denied the charge and in proving their case, the prosecution called eleven (11) witnesses. On his part the accused person tendered sworn defence testimony and did not call any additional witness.
3. According to the evidence of PW1 Cpl. William Kiptumo, PW2 IP Elias Mwaisaba, PW3 PC Alex Kimali, PW4 PC Kevin Kiprop, all of Makueni Police Station as at 2017, on December 27, 2017 the accused person a Police Constable was on duty at Makueni Police Station, and he began behaving strangely and even threatened a reportee member of the public with shooting.
4. In the process, the deceased IP Wanjala, who was Deputy OCS was contacted and came to find out what was happening and pacify the accused person.
5. The deceased then came to the police station, and together with other police officers talked to the accused person, who then promised not to do what he intended to do.
6. However, the accused who was armed with an AK 47 rifle suddenly cocked the rifle and shot the other police officers, two of whom were seriously injured and taken to Makueni County Referral Hospital for treatment immediately and the situation of the accused and ip Wanjala remained unknown for a while.



7. When police officers shortly after went back to the police station they found IP Wanjala lying dead outside the office with gun shots. The whereabouts of the accused person was however not immediately known.
8. On the next day, PW7 PC Dennis Masaki of DCI Kathonzweni received a report that a murder suspect was in Mbovu area, and together with other police officers like PW9 Cpl. Elphas Ngetich took immediate action, found the accused in the bush wearing a vest and holding his shoes in his hands, and arrested him. They also found and recovered from him the AK 47 rifle and ammunition and took possession of same.
9. The evidence of PW6 Johnstone Musyoki Mwongela a Firearms Examiner was that on January 2, 2018 he received from PC Ngetich 2 firearms marked A1 and E1. Two magazines marked B1 and E2. Thirty two (32) rounds of ammunition D1 – D15; and L1 – L17. Nine (9) fired cartridge cases C1 – C9. These were accompanied by an Exhibit Memo.
10. He examined the items and the report findings were that:-
 - A1 and E1 were two firearms.
 - A1 was an AK 47 rifle, designed to fire 7.62mm ammunition as L1 – L17 and it was in good condition and capable of firing ammunition.
 - E1 was CZ85B Pistol (Ceska Pistol) caliber 9mm and capable of firing 9x19mm ammunition like D1 – D15
 - B1 and E2 were two magazines, B1 for A1 and hold 30 rounds of 7.62 x 39 when fully loaded.
 - E2 was a magazine holding 15 rounds and worked well with E1
 - D1 – D15 and L1 – L17 were a total of 32 rounds of ammunition and L1 – L17 are used in AK 47 assault rifle.
11. It was his evidence that he picked 3 rounds from each batch of ammunition for test firing, and they were successfully fired. According to his evidence C1 – C9 were fired from the AK 47 rifle herein S/ No. 60033985 A1. He prepared the report, signed it and produced it as an exhibit.
12. PW8 Dr Emmanuel Loipasha testified that he conducted post mortem examination on the body of Denis Wafula Wanjala at Makueni Referral Hospital on December 29, 2017 at 10:20 hours and his findings were that there were visible gun shot wounds with entry and exit points and there were internal injuries in the upper abdomen with heavy internal bleeding. Cause of death was severe abdominal injury secondary to rupture of abdominal aorta due to penetrating gun shot. He filled and signed the post mortem report form and produced it as an exhibit.
13. PW10 Sgt Samuel Mbatia took twenty (20) photographs, as a Scenes of Crime Investigator, and submitted them to CID photographic section on February 8, 2018 for processing. He also prepared a certificate. He produced the processed photographs and the certificate as exhibits.
14. PW11 SSP Nehemiah Bitok testified that he was the investigating officer of this case when he was DCIO Makueni. He produced the firearms and ammunition herein as exhibits. He also produced a handwritten note said to have been written by the accused person as an exhibit.
15. When put on his defence, the accused tendered sworn testimony, saying that on the material day he could not remember what had happened, but that he remembered having found himself at Mathare Hospital. He also said in his defence that he suffered from traumatic disorder.



16. At the close of the evidence for both the prosecution and the defence, the defence counsel Mr. Kioko made written submissions, mainly emphasizing that the accused person was of unsound mind when the incident occurred.
17. The accused person herein stands charged with murder. In accordance with the provisions of section 107 of the *Evidence Act* (cap.80), the burden was on the prosecution to prove the allegations against the accused person. This being a criminal case, the standard of proof is beyond any reasonable doubt, see *Sawe =versus= Republic* (2003) eKLR.
18. Did the deceased die? From the evidence of prosecution witnesses IP Wanjala the Deputy OCS of Makueni Police Station was found lying dead after a police officer shot at other police officers at the station on December 27, 2017. The medical evidence of PW 8 Dr Emmanuel Loiposing is that he died of gun shot wounds and bleeding in the upper abdomen. I find that the prosecution proved beyond any reasonable doubt that the deceased died.
19. Was the death unlawful? No justification has been given for the death of the deceased and the manner in which he died through gunshots. As such, I find that the death was unlawful.
20. Was the death caused by the accused person? Nobody saw the accused kill the deceased. However, the evidence on record is very clear that after some discussions with the deceased to pacify the accused person, he shot at police officers and seriously injured two police officers, and the deceased was then found lying dead nearby. It is to be noted that the deceased was the head of the team that talked to the deceased when he started shooting.
21. The spent bullet cartridges were also found to have been fired from the AK 47 rifle issued to the accused person. In my view therefore, the prosecution proved beyond any reasonable doubt that the accused person caused the death of the deceased.
22. Was the death caused with malice aforethought? Malice aforethought is defined under section 206 of the *Penal Code* to be an intention to cause death or do grievous harm.
23. In our present case, the accused person has stated in his defence that he could not remember what happened that day. His counsel has argued in submissions that the accused person was insane at the time of the alleged incident.
24. In my view, the accused person might have been greatly depressed, that not necessarily mean that he was mentally ill to the extent described in section 166 of the *Criminal Procedure Code* (Cap.75), and section 11 of the *Penal Code*. Such depression, though it vitiated the malice aforethought, it meant that the killing was still unlawful.
25. In my view therefore, what the prosecution proved herein was unlawful death but with no malice aforethought, which amounts to manslaughter. I will thus convict the accused herein for manslaughter contrary to section 202 as read with section 205 of the *Penal Code*.
26. Consequently, I find the accused guilty of the offence of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*, and convict him for manslaughter accordingly.

DATED, SIGNED AND DELIVERED THIS 12TH DAY OF JANUARY 2024 VIRTUALLY AT VOI.

GEORGE DULU

JUDGE

In the presence of:-



Ms. Omolo for DPP

Defence Counsel – absent

