



**Republic v Kisumo (Criminal Case 24 of 2020)
[2024] KEHC 299 (KLR) (11 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 299 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL CASE 24 OF 2020
GMA DULU, J
JANUARY 11, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

DENNIS KYALO KISUMO ACCUSED

JUDGMENT

1. The accused herein stands charged with two counts of murder contrary to Section 203 as read with Section 204 of the *Penal Code*.
2. The particulars of Count I are that on 16th August 2020 at around 9:00 am at Kwa Kavisi Location Kathonzweni Sub County within Makueni County unlawfully murdered Sharon Minoo.
3. The particulars of Count II are that on 16th August 2020 at around 9:00 am at kwa Kavisi Location Kathonzweni Sub County within Makueni County murdered FMM.
4. He has denied both counts and in trying to prove their case, the prosecution has called six (6) witnesses.
5. PW1 Dr. Makau Alex testified in evidence that he worked at Makueni Referral Hospital and his testimony was on a post mortem report prepared by Dr. Everlyne Kitungo on 21st August 2020 on the body of Sharon Minoo.
6. The findings in the report were that externally there was puncture mark on the right shoulder appearing like a stab wound. There were bruises on the right cheek, cut wound on left ear and deep cut in occipital (back) of the head which was deep and extending to the skull. There was also a cut wound on the right side of the neck.
7. Internally, there was a cut wound on occipital side of the head and accumulated blood extending to the brain, with the cut in the neck being very deep. He testified that the cause of death was severe brain haemorrhage secondary to the deep injuries. He produced the signed post mortem report as an exhibit.



8. The witness also testified on the post mortem report on baby FMM – performed on 1st September 2020 at Kenyatta National Hospital by Dr. Andrew Gacii.
9. The findings were that F was a baby of 1 year and 1 month and externally had a healing laceration on the left side of the mouth extending to the ear.
10. Internally, there was a head injury on the left cheek and jaw bone was broken. There was increased pressures in the brain. Cause of death was raised pressure in the head due to head injury due to blunt trauma to the head. He produced the signed post mortem report as Exhibit 2, and was not cross-examined on the reports by defence counsel.
11. PW2 was a minor called NM, a child of 12 years who testified in court on oath that on Sunday 16th August 2020 at 9:00 am he was herding goats in the farm of his Uncle with his brother JM aged 8 when he heard screams and on going there on the side of the river he saw that his aunt Sharon had been killed.
12. He saw a person carrying a child on one hand, and pointed at the accused in the dock as that person. He then saw the person dropping the child on a trench. Then the person used a spade to cut the donkeys. According to this witness, the same spade was used to cut the child M.
13. He did not know the assailant before and thus he ran home and informed his sister about the incident, who informed his Uncle. He identified the spade in court. In cross-examination, he confirmed that he did not know the assailant before.
14. PW3 was Alex Muoki Kimunyu from Kavisi in Kathonzweni, a casual worker, and the husband of Sharon Minoo, and father of FM.
15. It was his evidence that on 16th August 2020 at 9:00 am he came home from buying milk at the market when he heard screams from the farm. On proceeding there he found that a young man Kyalo a neighbour, had cut his wife in the head.
16. It was his evidence that he actually witnessed the young man cutting his wife on the head with a spade, and on approaching saw the assailant carrying the child with one hand and the spade in the other.
17. According to him, at one point the assailant held the child on the left side of his chest, then threw the child in a trench.
18. The witness then chased the young man (assailant), and when he asked him what he was doing he chased him away and then ran into the bush with the spade which belonged to the witness.
19. The witness then proceeded to call an uncle Muendo Maithya and both proceeded to where the child was and noted that he child was still alive. The witness then took the child to hospital and asked his Uncle to inform the Chief about the incident. By that time, the witness had checked on his wife and ascertained that she was not alive.
20. From Makueni Referral Hospital, they were referred for specialized treatment at Kenyatta National Hospital where the child was admitted, but on 19th the Doctor phoned him to say that the child was not doing well and when he went to the hospital he found that the child was dead.
21. He identified the spade in court, and testified that his wife was putting manure to her vegetables using the spade when the incident occurred. He confirmed that he knew the accused Kyalo as they had attended the same Primary School, but he did not know why he had cut his wife and child. In cross-examination, he stated that the accused looked mentally unwell. In re-examination he said that accused had just come from Nairobi, and village rumours were that he was not mentally well.



22. PW5 was Muthiani Nzinga, a farmer who on 21st August 2020 attended hospital and identified the body of Minoo for post mortem examination. It was his evidence that the deceased was his daughter.
23. PW6 was Number 85537 Cpl. Andrew Halkano Dado of DCI Headquarters Tharaka Nithi, but previously at Kathonzeni DCI Office. It was his evidence that on 16th August 2020 at 13:00 hours he was called on phone by OCS and informed that there was a murder incident at Kavesi.
24. It was his evidence that the OCS informed him that a woman by the name Sharon Minoo and her daughter F had been attacked at their farm with a spade whereby Sharon died instantly, and the child survived and was rushed to hospital, and was referred to Kenyatta National Hospital for specialized treatment.
25. It was also his evidence that the OCS informed him that the suspect had already been arrested and appeared mentally challenged.
26. It was his evidence that he proceeded to Kavumbu and saw the accused tied with a rope. He was informed that a juvenile by the name N was herding goats at the time of the incident and saw the accused person attack and injure the deceased and the child.
27. It was his further evidence that he took the accused person to Dr. Masika for mental examination and the Doctor said that the accused was not fit to stand trial. He returned the accused person to the Doctor after a month for mental assessment, and the accused person was injected and given a dose of medicine for a month.
28. After 30 days the doctor still found that the accused person was unfit to stand trial. On the next mental examination after 30 days however, the Doctor said that the accused was fit to stand trial.
29. It was his evidence that on 19th August 2020 the husband on the deceased phoned him to say that the child had succumbed to the injuries and died. It was his evidence that on 21st August 2020 he attended the post mortem examination of Sharon Minoo, and on 29th August 2020 he attended the post mortem examination of the infant.
30. He took possession of the spade which was handed over to him by the OCS Kavumbu, which the witness produced as an exhibit.
31. It was his evidence that during investigations, he visited the home of the accused person and neighbours informed him that the accused and his wife had come from Nairobi and that the accused person was behaving strangely. He identified the accused person in court.
32. In cross-examination, he stated that he was informed that the accused had no prior mental challenge. He stated that he gave the accused person medicine prescribed by the doctor, and that the wife of the accused person ran away. That was the prosecution evidence.
33. In his sworn defence, the accused stated that he was a mason and that on 9th August 2020 he left Nairobi to travel home with his family. He met his mother Joyce Wayua and sister Anna Muthoka. According to him, he did not know what happened with regard to the incident and only found himself in the Police Station at Kavumbu, tied with ropes and was injured.
34. In cross-examination, he said that he did not know both the deceased. He maintained that he did not know what happened from 10th. He said that he did not have prior mental illness and was just informed at the Police Station that he had killed a mother and a child.



35. This is a murder case. The charges are two. The prosecution is required to prove each charge and this burden is codified under Section 107 of the Evidence Act (Cap.80), as he who alleges has the burden of proving his or her allegation.
36. This being a criminal case, the prosecution has the burden of proving every element of the two charges beyond any reasonable doubt – see Sawe = Versus = Republic (2003) eKLR.
37. With regard to Count I, did the prosecution prove beyond reasonable doubt that Sharon Minoo died?
38. In this regard there is the evidence of PW2 and PW3 who saw her motionless body that morning after having been attacked at her farm on 16th August 2020 at 9:00 am, as well as the evidence of PW3 Alex Muoki Kamuyu who was called to the scene as the attack was in progress.
39. There was also the evidence of PW1 Dr. Makau Alex who testified on the post mortem examination report and established the cause of death. In my view, the prosecution proved beyond any reasonable doubt that Sharon Minoo died on 16th August 2020 of severe brain haemorrhage secondary to deep cut wounds.
40. Was the death unlawful? In view of the circumstances of the death where the deceased was attacked for no apparent reason, and no explanation given to justify on the death, I find that the death was unlawful.
41. Was the death caused by the accused person. Again, I go to the evidence of PW2, NM and PW1, who witnessed the attack on the deceased in broad daylight. There was no possibility of mistaken identity. I find that the prosecution proved beyond reasonable doubt that the accused caused the death of the deceased – Sharon Minoo.
42. I now turn to Count II, which relates to the death of FMM the daughter of Sharon Minoo. Again, PW2 and PW3 witnesses the attack of this child together with her mother (Sharon).
43. The child did not die immediately. She was taken to Makueni Hospital and also Kenyatta National Hospital where she died on 19th August 2020. PW1 testified to the post mortem examination, and the cause of death of this young child of 1 year and 1 month was established to be raised pressure in the head due to head injury due to blunt trauma to the head.
44. In my view therefore, the prosecution proved beyond reasonable doubt that the deceased in Count II died, that the death was unlawful and that the death was caused by the accused person herein.
45. I now turn to whether the death of both deceased persons was with malice aforethought. Malice aforethought is defined under Section 206 of the Penal Code. It is an intention to cause death or to do grievous bodily harm.
46. In my view, the vicious nature of the injuries on each of the two deceased person proved malice aforethought, as the attacks with a spade were so vicious that death would in any event occur.
47. Though the counsel for the accused person asked questions in cross-examination to suggest that the accused was insane at the time of the incident, such defence was not established as required under the Criminal Procedure Code and Section 11 of the Penal Code, as not all mental disorders amount to insanity. I thus find that the two deaths were caused with malice aforethought.
48. Consequently, I find that the prosecution proved the two counts of murder contrary to Section 203 as read with Section 204 of the Penal Code against the accused person herein, and I convict the accused person on each of the two counts of murder accordingly.



**DATED, SIGNED AND DELIVERED THIS 11TH DAY OF JANUARY 2024 VIRTUALLY FROM
VOI.**

GEORGE DULU

JUDGE

In the presence of:-

Ms. Nusura – Court Assistant

Ms. Omolo for DPP

Accused

Mr. Hassan holding brief for Judah Kioko for Accused

