



REPUBLIC OF KENYA



**Republic v Mwangi (Criminal Case E027 of 2021)
[2024] KEHC 3145 (KLR) (14 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 3145 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE E027 OF 2021**

A. ONG'INJO, J

MARCH 14, 2024

BETWEEN

REPUBLIC PROSECUTOR

AND

EDWIN CHOMBA MWANGI ACCUSED

JUDGMENT

1. The accused Edwin Chomba Mwangi is charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*.
2. The particulars are that Edwin Chomba Mwangi on the 2nd day of December 2020 at Magongo - Biokole area in Changamwe Sub-County within Mombasa County stabbed Lilly Wangui Gathome which injuries resulted to her death on 4th December 2020.

Prosecution's Case

3. The prosecution called a total of 6 witnesses to prove the allegations that the accused committed the offence of murder. PW1, Dr. Ruth Nyangi of Kilifi County Hospital examined the body of deceased on 10th December 2020 at 2.30pm and was of the opinion that death was caused by a penetrating abdominal injury. She observed 4 stab wounds on the neck, chest, abdomen and back. She said there was bleeding and blood clot on the back side of the abdomen. That the right kidney had a cut extending to the posterior. That there was also a fracture on the left forearm.
4. PW2, Cecilia Njeri, testified that on 2.12.2020 at about 7.00am a neighbour known as Jane called her through the phone and told her Mama Mercy had been stabbed by her son. That Samuel also called and instructed her to go Mkomani Hospital as the mother had severe injuries. That at the hospital she found the lady who had taken her sister to hospital. She said that her sister Lily told her it was Edwin who had stabbed her and she did not know why. PW2 said Edwin was the son to the deceased's sister



- and he used to stay with her. That the deceased spoke to her daughter on phone and she send Kshs 6000/- which was required for X-ray and Scan.
5. That when Scan and X-ray were done, they were told the deceased required to go for urgent surgery and that Kshs 6000/= was required. That when the daughter was called she said she could raise half of the money. The deceased requested to be taken for surgery as she would pay back. That when the hospital declined to do surgery they were told to discharge their patient and take her to another hospital. They paid for an ambulance but again it was not available. That when they got a taxi and went to Mikindani Hospital, the patient was found to be anaemic. That her blood group was not available although many people donated blood.
 6. That the doctor communicated with Kilifi County Hospital to establish if the patient blood group was available and an ambulance took the deceased to Kilifi where she was rushed to theatre at 11.00pm. That after surgery the deceased spoke to PW2 but she was very weak. That when she was taken to the ward, she did not talk again. That they remained in hospital up to 3.12.2020 when they returned home and on 4.12.2020 at 7.00am they got information that the deceased had died. PW2 said she knew the deceased in 1987 and she was a close friend. That the deceased's husband died 5 months prior to December 2020 and that she was blessed with a daughter and a grandson. PW2 said she was not aware of any differences between the accused and the deceased and that she referred to the accused as her son.
 7. PW3, Eunice Muchiri, elder sister to the deceased said that on 02.12.2020, she received a phone call from the deceased's daughter called Mercy who told her the mother had been stabbed by Edwin and she did not know the cause. PW3 said that when she was on her way to Mombasa to visit her sister she received a phone call from her brother who told her that their sister Lilly had died. That she arrived in Mombasa and the following day she proceeded to Kilifi County Hospital Mortuary where she identified the body for postmortem. She said her sister had multiple fractures on the left arm. She said that the accused was the only child of their late sister and he had no dispute with the deceased as he was even staying in his own house.
 8. PW4, Rose Wanjiku Waweru, testified that the deceased was her neighbour in Magongo and she had known her several years. PW4 said the deceased used to stay with her husband but the husband died and she remained alone. That on 2.12.2020, PW4 woke up at 5.00am and prepared breakfast for her husband to go to work and thereafter started washing clothes. She said that when she went to hang clothes at 6.15am the accused went to visit his aunt, the deceased herein. That the accused asked if the deceased had woken up and PW4 told him that the deceased had not woken up. That the accused then said he would come back later.
 9. That at 7.15am, PW4 said she was brushing her teeth outside when Edwin came again and asked if the deceased had woken up. PW4 told the accused that the deceased was at the tap selling water to customers. PW4 narrated how the accused assaulted the deceased using a log. That he pursued her into PW4's house and when the deceased wanted to go under the bed to hide herself, the accused pulled her by the leg and continued beating her before picking a knife that was on the table in PW4's house and used it to stab the deceased severally. PW4 tried to restrain the accused from inflicting injuries on the deceased but he pushed her away and she fell and hit herself on the back. She said she was unable to stand as she was injured and she sat on the floor and asked the accused why he had decided to kill his aunty in her house.
 10. That even as she asked Edwin why he was stabbing the aunt, he stabbed her again on the right side of the neck. That an unknown man entered and held the accused's hand and twisted it and that is when the accused let go of the knife. That the man got the accused out of the house and members of public descended on him. That the deceased then escaped through the door to the shop and went to a



neighbours house. PW4 said she was in shock and unable to stand or even take the deceased to hospital. She was also assisted out of the scene by a neighbour.

11. PW4 said the deceased was taken to Mkomani Hospital where a lot of money was required and she was transferred to Mikindani and later to Kilifi County Hospital where she died on 4.12.2020 while undergoing treatment. PW4 said she did not know where the knife and pieces of wood used to inflict injuries on the deceased went to. PW4 said the accused used to visit his aunt from time to time and she was not aware of any dispute between them. PW4 said she was in the shop when the accused attacked the deceased. She said that the deceased raised alarm and called her to help and when she got out she found the accused assaulting her and they entered her house forcefully. She said she did not know how the fight started.
12. PW4 said when she opened door to her house in response to alarm raised by the deceased the deceased rushed into the house while being beaten by the accused. She said that her chair was broken when the accused was assaulting the deceased in her house. She said the deceased was escaping from the accused when she entered PW4's house. That the deceased tried to go under the bed as PW4 held the accused from behind but the accused pushed her away against the door and pulled the aunt from under the bed using her legs and continued beating her.
13. PW5, Peter Kariuki Nyaga, testified that on 2.12.2020 he was at home in Magongo when he was informed that Lilly Wangui had been stabbed with a knife. That he proceeded to hospital where she had been rushed and he found she had been referred to Bomu Hospital. That at 2.00pm they took the deceased to Mikindani Hospital where they were told the deceased needed to be transferred and her blood group could only be found in Kilifi County Hospital. That in Kilifi the deceased was taken for Surgery and thereafter she was admitted in the ward. PW4 said he remained in hospital as the 2 lady neighbours returned home in the morning.
14. PW5 said the deceased died at 4.00am on the 3rd night of her admission. He said he identified the body for postmortem and saw she had stab wounds on the neck and abdomen and her intestines came out. He said he learnt it was the nephew to the deceased Edwin who stabbed her. He said the deceased was too weak to talk after surgery. He said that when the deceased was taken to hospital she was talking.
15. PW6, Inspector Samuel Kemba, testified that on 7.3.2020 he was instructed by the OCS Changamwe to record a report of death of Lilly Wangui Gathome. He said report of murder was made by Peter Kariuki Nyaga, PW5, who said that on 2.12.2020 the deceased person's nephew attacked and inflicted multiple stab wounds for unknown reasons.
16. PW6 said the suspect was apprehended at the scene by members of public who beat him up and had to be taken to hospital for treatment before being taken to the police station. That when no report was made as to the condition of victim, the suspect was released and instructed to return on 4.12.2020 but he did not turn up. That when the accused learnt of the aunt's death he went underground. On 18.12.2020 postmortem was done at Kilifi County Hospital Mortuary. PW6 recorded statements of witnesses.
17. That on 28.07.2021, PW6 proceeded to Kiganjo Training College for a promotional course and it was on 17.08.2021 that Chief Inspector Florence called and informed PW6 that accused had been traced in Kirinyaga County and had been arrested and was to be escorted to Changamwe Police Station. On 17.03.2022, PW6 recorded his statement. When the Prosecution closed its case, the accused was placed on defence.



Defence Case

18. The Accused gave sworn statement and said that he used to stay with the cousin to his grandmother in Magongo Mwisho. Accused person said he was 35 years old and he is not married. He said his mother is deceased. He said the deceased was his mother's elder sister. That the deceased stayed 100m from where the accused was working in a garage as a mechanic. He said that on 2.12.2020 he was at his grandmother's house which is 500m from the garage. That at 8.00am he left to go to the garage and he arrived at 8.30am. That when he arrived at the garage his customer had not arrived and he sat on a chair outside a shop near the garage.
19. That while there 3 young boys went and said there was a woman who had been attacked by her son near Alex's home. That thinking it was Alex's mother who had been attacked he proceeded to scene but he did not see anyone come out. That suddenly Rose came from the shop and asked why he had beaten his mother and he told her he had not beaten anyone. That a young man called Okoth started beating him and other people joined in beating him. That his aunts Wambui and Lucy came to scene and told members of public to leave him alone. That the village elder went to scene and called police who arrested him. That the victim was not at scene.
20. Accused said he did not enter the plot and he did not see any blood at the scene. He said it is Rose who shouted and said he is the one who had injured his aunt. He said he had stayed in the plot with his aunt and Rose also stayed in the same plot and was a friend to the deceased. He said during his stay with the deceased they had no dispute. He said that police rescued him from the mob and took him to Changamwe Police Station. He said he was placed in cells overnight and released the next day as there was no report against him.
21. That when he went back to work he was assigned a car to repair and then accompany it up to Mandera. That on return to Mombasa he was informed his aunt had died and the body was taken home for burial. That he decided to go upcountry and worked in Eastleigh for about 8 months before he went to Kirinyaga where he met his uncle. That his uncle asked if he is the one who killed the aunt but he told them he did not kill her. That his uncle decided to have him arrested. That he was arrested on 27th/28th July 2021. The accused said he did not go underground after the incident. He said he went to Mandera on duty after he was released from police cells. The accused denied having entered his aunt's/house. He said he was in front of Rose's shop.
22. He said that he had told Rose off for always sending him on errands whenever he visited the deceased. He said Rose claimed the accused was destructing her school going daughter. He said he suspected it was Alex who was beating his mother as he used to drink and then beat his mother. He said he was known as the deceased's son as he used to stay with her. Accused said in cross examination that he was beaten by a mob.

Accused Person's Submissions

23. At the close of defence case, written submissions dated 2nd February 2024 were filed on 9.2.2024. The accused persons advocate submitted that the prosecution had not proved any of the ingredients of the offence of murder beyond reasonable doubt.
24. While relying on the holdings in Appeal No 104 of 2018 Nairobi, David Munyiri Chiragu and Samuel Lwigi Nganga v Republic, defence counsel submitted that the accused cannot be convicted with the evidence of one witness without corroboration. She argued that the murder weapon knife and stick allegedly used to inflict injuries on the deceased were not produced.



25. It was argued that the evidence of PW2 that the deceased told her that the accused stabbed her was not corroborated and the same should be disregarded. It was further submitted that the prosecution had also not proved malice aforethought on the part of the accused and that the case against him was based on circumstantial evidence. It is also submitted that accused was not at scene of the murder. That he was in a nearby garage when he and people shouting and it is when he went to scene that PW4 started shouting that the deceased had been stabbed by her son and that people started beating him as they knew that he was son to the deceased. That the accused was arrested but released as there was no evidence incrementing him.
26. This court was urged to note that the threshold in respect to murder case for conviction was not satisfied and the accused should be acquitted.

Analysis and Determination

27. In consideration of the evidence of 6 prosecution witnesses, in consideration of the defence witnesses' sworn statements, and submissions of the accused person, this court is to determine whether the ingredients of the offence of murder as provided for under Section 203 of the Penal Code Chapter 63 of the Laws of Kenya have been proved beyond reasonable doubt by the prosecution.
28. Section 203 of the Penal Code Chapter 63 of the Laws of Kenya under which the accused person was charged provides as follows: -
- ‘Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.’
29. The said provision creates elements of the offence of murder that must be proved by the prosecution beyond reasonable doubt as held in the case of Anthony Ndegwa Ngari v Republic [2014] eKLR to include: -
- i. That the deceased died;
 - ii. That the death was caused by an unlawful act or omission;
 - iii. That the accused person directly or indirectly participated in the commission of the alleged offence; and
 - iv. That there was malice aforethought.

Death of the deceased

30. There is no dispute as to the death of the deceased Lilly Wangui Gathome.

Death was caused by an unlawful act or omission

31. Dr. Nyangi of Kilifi County Hospital examined the body of the deceased on 10th December 2020 and observed 4 stab wounds on the neck, chest, abdomen and on the back. She observed that there were cuts on the deceased person's small intestines with blood clot on the back side of the abdomen. There was also a cut on the right kidney extending posteriorly measuring 25 cm by 2 cm. That there was left mid shaft closed and radioulnar fracture (fracture of the left forearm). She concluded that death was caused by penetrating abdominal injury.
32. PW4 who was the neighbor to the deceased saw when she was being attacked using a log and a knife and she tried to intervene.
33. There is therefore no dispute that the death of the deceased was caused by an unlawful act.



Participation of the accused in the commission of the alleged offence

34. PW4, Roise Wanjiku Waweru, was the sole eye witness to the happenings of 2.12.2020. She said that the accused person who is a nephew to the deceased went to inquire from her whether the deceased had woken up at 6.15 am. When she told him that the deceased had not woken up, he left and said that he would come later. That at 7.15 am, she was brushing her teeth when the accused again came back and inquired about the deceased and she directed him that the deceased was at the tap fetching water. That PW4 went into her shop to serve customers and that is when she heard the deceased saying “Rose nauliwa. Bado uko ndani?” That when she got out, she found the accused using a log to beat the deceased and the deceased person sought refuge in her house using the back door and the accused followed her and continued beating her. That the deceased fell down and the stick that the accused was using to beat the deceased broke PW4’s plastic chair.
35. PW4 held the accused from the back trying to restrain him from beating the deceased further but she pushed him away and he fell. That the deceased tried to hide under the bed but the accused held her legs and pulled her out and picked a knife that was on a table in PW4’s house and started stabbing the deceased all over the body. The accused did not hear the pleas of PW4 who told him to stop stabbing the aunt. That the alarm that she and the deceased raised attracted members of the public and a man who was unknown came and held the accused person’s hand, twisted it and he let go of the knife. The deceased then got an opportunity of escaping from the house.
36. It has been submitted that the evidence of PW4 that the accused committed the offence was not corroborated and that the accused person did not commit the offence herein but this offence was committed early in the morning and PW4 knew the accused person prior to this date. She used to see him visit the deceased and at some point he was staying with the deceased who was a friend and close neighbor to the deceased. There was therefore no possibility that PW4 could have mistaken somebody else for the accused person. Allegations that the accused person differed with PW4 is an issue that came at the tail end of the trial. The same was never put to PW4 in cross examination and cannot therefore be used to challenge the strong prosecution evidence.
37. The accused person’s defence of alibi was also raised too late in the day. When members of the public responded to the alarm that was raised by PW4, the accused was found inside PW4’s house stabbing the deceased with a knife. A member of the public held his hand, twisted it and he let go of the knife. He was removed from PW4’s house and on being taken out, members of the public descended on him. PW4 said she remained in the house crying as the deceased escaped through the shop door to a neighbour’s house. It is not therefore true that PW4 is the one who identified the accused to the members of the public. PW4 said that she was in shock and she had to be assisted from the scene. PW4 was never questioned about the identity of the person who assaulted the deceased as it was never in dispute.
38. Apart from the evidence of PW4 who was an eye witness, PW2, Cecilia Njeri Waweru, testified that when she visited the deceased at the hospital, the deceased told her that it is the accused who stabbed her with a knife. This evidence is corroborated by PW4 that it is the accused who stabbed her with a knife. PW2 said further that even after surgery, the deceased was still talking and it is only after she was taken to the ward that she did not talk again. It is the accused person who committed the unlawful act that caused the death of the deceased.



Malice aforethought

39. Section 206 of the [Penal Code](#) defines malice aforethought as follows: -

“Malice aforethought shall be deemed to be established by evidence proving anyone 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 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 act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony”.

40. On the element of malice aforethought in respect to Section 206 of the [Penal Code](#), the court held as follows in the case of [Isaac Kimathi Kanuachobi v R](#) (2013) eKLR: -

“There is express, implied and constructive malice. Express malice is proved when it is shown that an accused person intended to kill while implied malice is established when it is shown that he intended to cause grievous bodily harm. When it is proved that an accused killed in further course of a felony (for example rape, a robbery or when resisting or preventing lawful arrest) even though there was no intention to kill or cause grievous bodily harm, he is said to have had constructive malice aforethought.”

41. The elements to prove malice aforethought were settled in the case of *Ernest Asami Bwire Abanga alias Onyango v R* (CACRA No 32 of 1990) where the Court held:

“the question of intention can be inferred from the true consequences of the unlawful acts or omission of the brutal killing, which was well planned and calculated to kill or to do grievous harm upon the deceased.”

42. The fact that the accused person came very early in the morning to look for his aunt at 6.15 am and thereafter at 7.15 am and when she found her, he used a log to beat her and pursued her as she was running for her life into PW4’s house is a clear indication that the accused person had express intention to cause grievous harm and/or death of the deceased. When PW4 tried to restrain him from beating the aunt, he pushed her away and told her to keep off from matters that did not concern her. He pulled the aunt from under the bed and finding a knife on the table in PW4’s house, he used it to inflict multiple fatal injuries that even medical intervention could not save her life. The manner in which the offence was committed is clear proof of the extent of malice on the part of the accused in this matter.

43. In conclusion, this court find that the prosecution has proved its case beyond reasonable doubt. The accused person is found guilty of the offence of murder and convicted accordingly pursuant to Section 322(1) of the [Criminal Procedure Code](#).



**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,
THIS 14TH DAY OF MARCH 2024**

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of: -

Etropia- Court Assistant

Mr. Ngiri for the State

Ms. Munyari Advocate for the Accused

Accused person present in person

