



**Republic v Njeru (Criminal Case E004 of 2021)  
[2024] KEHC 3651 (KLR) (17 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 3651 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
CRIMINAL CASE E004 OF 2021  
LM NJUGUNA, J  
APRIL 17, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**DEDAN NJERU NJERU ..... ACCUSED**

**JUDGMENT**

1. The accused was charged with murder contrary to Section 203 as read together with Section 204 of the *Penal Code*. The particulars of the offence are that on 19<sup>th</sup> December 2020 at Kiriari village, Nguthi location within Mbeere North sub-county in Embu County, the accused murdered Brayden Mutwiri. Upon arraignment, he pleaded not guilty and a plea of not guilty was duly entered before the matter proceeded to full hearing.
2. PW1, Amon Muriithi Namu is the father of the deceased who stated that the deceased was 4 years old when he died. He stated that on the day of the incident, he received a phone call from his brother who informed him that the deceased was missing. That he rushed home and found many people who were helping to look for the deceased but they did not find him. That 3 days later, a cousin called Kevin Ngari admitted to him and 2 relatives that he was the one who took the child. That after Kevin’s confession, he reported the disappearance of his son at Kanyuabora Police Station and the issue was taken up by DCIO Mbeere North for investigations.
3. That he took Kevin to the police station in the company of his mother and he confessed to having taken the deceased to the accused person, who is a well known witchdoctor. That he gave the police officers the phone number of the accused and they arrested him. That Kevin was wearing a bloodstained t-shirt which was confiscated by police and he said that the blood belonged to the deceased. That Kevin volunteered to take them to the place where the deceased’s body was and they found the human remains along the banks of Thuci River. That Kevin said that he was holding the child while the accused cut the deceased’s thighs with the intention of drinking his blood.



4. That the body of the deceased had decomposed and did not have the tongue, private parts and it had cuts on the thighs and arms. That some samples were taken for analysis by the government chemist. He identified the clothes worn by Kevin and stated that they were taken alongside a sample of his saliva to the government chemist for analysis. That Kevin is his cousin and was with him throughout the search for the deceased. On cross-examination, he stated that he was present when Kevin confessed to taking the deceased. That his initial statement showed that the deceased was seen leaving on a motor cycle with 2 men and none of them was the accused. That the accused was a known witchdoctor in their village.
5. PW2 was Juliet Wanja Mukuri, the mother of the deceased, who stated that on the day of the incident, the deceased went out to play at a neighbor's place. That he returned for lunch and then went out again to play but never returned and she thought he had gone to church with other children as they usually did. That when she went to deliver milk in the evening, she met the other children returning from church but the deceased was not with them and they said they had not seen him. That she called the deceased's grandmother and then began searching for the deceased. That the deceased's grandmother had gathered some people to help in searching for him but they did not find him.
6. That on 12<sup>th</sup> January 2021, Kevin Ngari was escorted to her home by DCI officers who said that he knew where the child was and he led them to the scene but she did not accompany them. That her cousin identified the body at Ena Funeral Home on 20<sup>th</sup> January 2021. On cross-examination, she stated that Kevin said that he was the one with the child last before he was taken by 2 people on a boda boda. She described Kevin as a dubious person and was known for random petty theft in the village. That she was not present when Kevin confessed to the police.
7. PW3, Jacob Njeru Ngari is the grandfather of the deceased. He stated that on the day of the incident, at around 7pm, he left his workplace for home and when he arrived, he did not find his wife. That he was informed that she had gone to assist in looking for the deceased and he joined the search but they did not find him. That the following day, he went to search for the deceased in Rweria river but did not find him. That on 27<sup>th</sup> December 2020, he visited different mortuaries but did not find his grandson. That PW1 called him and informed him that he knew where the body of the deceased was. That they went and found the decomposing body of the deceased at the bank of Thuci river which is near their home.
8. PW4, Charles Mugendi Nyaga stated that on 13<sup>th</sup> January 2021, he was at his farm when his mother informed him that the child who had been reported missing had been found at Thuci river. That he went to the river and found a crowd had gathered but they couldn't reach the body. That the area chief requested him to go into the river and help retrieve the body and he did. That he noticed that the body was decomposing and had injuries on the neck and other parts of the body. On cross-examination, he reiterated that he was the first person to see the decomposing body and he noticed injuries around the neck area of the deceased. He stated that he did not see any weapon around where the body was found.
9. PW5 was Martin Kithinji Njeru who stated that on 20<sup>th</sup> January 2021, he identified the body of the deceased for postmortem purposes. That he was only able to identify the body according to the description given to him by PW1 who had told him the particulars of the injuries on the body of the deceased. That without the information given by PW1, he wouldn't have been able to identify the body of he deceased.
10. PW6, Kevin Ngari Nyamu is an uncle of the deceased. He was charged with the offence alongside the accused herein but was discharged and was made a prosecution witness. He stated that on the day of the incident, he saw the accused taking the deceased through the fence after he had been dropped off by a bodaboda. That when he asked the accused why he was taking the deceased, he said that the deceased's father had sent him. That when he asked more questions, the accused drew a knife and threatened to



stab him. The 3 of them walked to the river, about 2km away. That nobody saw them walking because people were in church at that time, around 2-3pm in the afternoon.

11. That at the river, the accused person took the child and cut off his tongue then slit his throat, causing blood to squirt on his (PW6) clothes, which he identified in court as a white t-shirt and grey pants. That the accused threatened to kill him if he revealed the occurrence to anyone. That when he heard that the accused was being looked for, he told the police the truth and he was arrested alongside the accused. On cross-examination, he stated that on the day of the incident, he had been left at home to care for 3 children as the adults went to church. That he did not see the motor cycle that dropped off the accused and that he couldn't identify the rider.
12. He stated that what he told the police initially is what he is telling the court and that the court should rely on both versions of the testimonies. His testimony to the police was that on the day before the incident, he had consulted the accused who was a known witchdoctor, who had told him to see him the following day in the company of the accused. That on the day of the incident, he went with the minor to the bush where he met with the accused and they proceeded to the river. That while there, the accused tied the hands and legs of the child and then cut his wrists and collected the blood that came out of the wounds. That he did not know where the body of the deceased was found in the river and that the accused went away with the knife and rope he had used.
13. PW7 was Ruth Wangari Kahiu, a government analyst. She stated that her office received a request for analysis accompanied by 9 items, some being samples and others being exhibits. She concluded that the blood samples on PW6's clothes are of an unknown male origin who is not the deceased and the samples from the body of the deceased exclude PW1 as the biological father of the deceased, who is the son of PW2. She produced the analysis report as evidence.
14. PW8 CI Nancy Ekakoro of DCI headquarters assisted in documenting the postmortem of the deceased. She produced photographic evidence as exhibits together with a report. On cross-examination, she stated that from the photographs, there were no injuries to the neck of the deceased.
15. PW8 was SGT Awath Isaac Mohamed of CID Mbeere North. It was his testimony that the deceased was reported missing by PW1 on the day of the incident. That he began investigating the matter and found that PW6 was involved in the disappearance of the child. That PW6 had been advised by the accused who was a witchdoctor that he should take the deceased to him for ritual purposes and so he took the deceased to Thuci river. That the accused tied the child with ropes and then cut his wrists and thighs with a knife and drew his blood onto a basin. That after collecting the blood, the accused threw the child into the river.
16. He stated that PW6 took them to the scene which was by the riverside and he also took them to his house where they recovered the clothes he was wearing on the day of the incident. That the accused was arrested and charged and although he was willing to surrender the murder weapon, the same was not recovered because an irate mob destroyed his house before the murder weapon was recovered. That the body of the deceased was recovered about 3km from the scene of crime. He produced the mental assessment report for the accused person.
17. On cross-examination, he stated that the accused was implicated by PW6 and that he did not find evidence to show that there were other children at the scene. That PW6 was found mentally unfit and given medication to treat his condition as he was found to suffer from hallucinations. That the DNA profile generated from the blood found on the clothes of PW6 was found to be of male origin but it is PW6 who said that it was the deceased's blood. In re-examination, he stated that the murder weapon was not recovered because the angry mob had completely destroyed the home of the accused.



18. PW10 was Dr. Richard Njoroge, the pathologist who examined the body of the deceased on 20<sup>th</sup> January 2021 at Ena Funeral home in Mbeere North. He observed that the body of the deceased had suffered massive decomposition and the skin was peeling. That the remains were very pale, almost white, meaning that there had been a lot of bleeding. That there were deep cuts on the upper and lower limbs at the left elbow and left wrist and there were similar injuries on the right elbow and skin bruises on the thighs. That the tongue had been cut off but all the other systems were normal. That there were no injuries on the neck of the deceased and even if there were injuries, decomposition would have interfered with them.
19. He formed the opinion that the cause of death was excessive bleeding because of internal and external cut wounds. That he collected samples from the body of the deceased for DNA analysis. He produced the postmortem report as evidence. On cross-examination, he stated that the cuts had been inflicted before the death and not after death of the deceased. That the body of the deceased was naked at the time of examination but the private parts were there. That he saw the incision at the point where the tongue was severed from the pharynx and that the private parts had decomposed but there was no interference.
20. After the close of the prosecution's case, the court found that the accused person had a case to answer and was placed on his defense.
21. DW1, the accused person, stated that on 21<sup>st</sup> December 2020, he was meeting a contractor whom he had instructed to do some construction work for him at his club and they went to another club. That while there, the police went and handcuffed him then escorted him to his club where they found an angry mob destroying his property on allegation that he was involved in the death of the deceased. That the officers took him to his house and searched the place and all the rental houses in the compound but did not find anything. That he was taken to Kanyuabora Police Station where he met PW6 who told the police that he had taken the child to him so that he can remove the private parts and sell them in Nigeria.
22. That he was tortured by police officers as he was driven around from one police station to another. That while at Ishiara Police Station, he was physically assaulted and was treated at Siakago Dispensary. That himself and PW6 who had also been arrested were taken to Meru Government Hospital where PW6 was found to be mentally ill. That he spoke to his cousin on phone and asked her to send him some money through an officer's phone but the officer refused to give him the money. That when his house was torched, the police officers took him to see it on 15<sup>th</sup> January 2021 at around 4AM. That he was in police custody for one month before he was charged with the offence. He stated that the deceased is alive and the body that was recovered is not that of the deceased.
23. After the close of the defense case, the court directed the parties to file their written submissions but only the prosecution complied.
24. The prosecution filed its written submissions in which they urged the court to consider the case of *Anthony Ndegwa Ngari vs Republic* [2014] eKLR where the elements of the offence of murder were outlined as set out in section 203 of the *Penal Code*. It submitted that on the death and cause of death, the same were ascertained by PW10 who produced the postmortem report. It relied on the cases of *Republic v. Stephen Sila Wambua* (2017) eKLR and *Guzambizi Wesonga v. Republic* (1948) 15 EACA 63 for the argument that Article 26(1) and (3) of the *Constitution* accords everyone the right to life and that there was no justifiable cause for the deceased's life to be taken away.
25. On the issue of whether the accused person caused the death of the deceased, PW2 narrated of the whereabouts of the deceased on the day he went missing and PW6 confirmed what had happened to



- the deceased in the hands of the accused. That the element of malice aforethought under section 206 of the Penal Code has been proved through the nature of injuries inflicted on the deceased as narrated by PW6 and corroborated by PW10. It urged the court to disregard the defense of the accused person as the same is targeted at diverting the overwhelming evidence of the prosecution.
26. It is now upon this court to determine whether or not the offence of murder has been proved beyond reasonable doubt.
27. Article 26 of the Constitution of Kenya provides that a person shall not be deprived of life intentionally, except to the extent authorized by the Constitution or written law. The accused person herein faces the charge of murder contrary to section 203 as read together with 204 of the Penal Code. It is upon the prosecution to prove beyond reasonable doubt, that the accused murdered the deceased. Section 203 of the Penal Code provides the elements of the offence as follows:
- “203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
28. In the case of Republic v W.O.O. [2020] eKLR (Migori High Court Criminal Appeal No. 26 of 2017) the elements of murder were explained, as guided by the Court of Appeal in the case of Anthony Ndegwa Ngari vs Republic [2014] eKLR, as follows:
- “For the offence of murder to be proved, there are three elements which the prosecution must prove beyond reasonable doubt in order to secure a conviction. They are: (a) the death of the deceased and the cause of that death; (b) that the accused committed the unlawful act which caused the death of the deceased and (c) that the Accused had the malice aforethought.”
29. On the first element of death and cause of death, PW10 testified that he examined the body of the deceased and formed the opinion that the cause of death was excessive bleeding due to internal and external bleeding. He produced the postmortem report as evidence. He observed that the body of the deceased had undergone extensive decomposition and if there were any injuries on the neck, the level of decomposition could have interfered with the injuries. He observed that the tongue of the deceased was missing and he saw the incision where it was severed. The testimony of PW10 corroborates that of PW6 who narrated the circumstances under which the deceased met his death.
30. On the element of the unlawful act which caused the death of the deceased, the prosecution bears the legal burden of proving that the accused was linked to the death of the deceased. This can be proved through evidence that the accused was at the scene of the crime when it occurred. PW6 stated that the accused took the deceased through the fence when he was dropped off by a bodaboda whose rider he could not identify. He narrated that when he enquired why the accused was taking the deceased, the accused threatened to stab him with a knife. That the accused, the deceased and himself walked towards river Thuci and nobody saw them.
31. That upon reaching the river, the accused tied the deceased with a rope and then cut off his tongue, slit his throat and wrists and drew blood into a basin before throwing the body of the deceased into the river. PW6 also stated that the accused, a known witchdoctor, whom he had consulted the previous day and he had told him to take the deceased to him for ritual purposes. According to PW8, PW6 narrated this ordeal to him in the same fashion. The question of whether it is the accused who caused the death of the deceased is answered in the affirmative. In my view, the narration of PW6 places the accused at the scene of the crime and even details the injuries he inflicted on the deceased, which were corroborated by PW10.



32. On the element of malice aforethought, the prosecution must prove beyond reasonable doubt that the accused intended to cause the death of the deceased. Malice aforethought is defined and well explained under section 206 of the [Penal Code](#) as follows:

“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.”

33. Further, the court in [Republic v Njeru & 3 others](#) (Criminal Case 2 of 2019) [2023] KEHC 19141 (KLR) stated as follows:

“The Court of Appeal in *Bonaya Tutu Ipu & Another Vs Republic* [2015] eKLR stated as follows on the prove of malice aforethought; -“It is in rare circumstances that the intention to cause death is proved by direct evidence. More frequently, that intention is established by or inferred from the surrounding circumstances. In the persuasive decision of *Chesakit Vs Uganda*, CR. app. no. 95 OF 2004, the Court of Appeal of Uganda stated that in determining a charge of murder whether malice aforethought has been proved, the court must take into account factors such as the part of the body injured, the type of weapon used, if any, the type of injuries inflicted upon the deceased and the subsequent conduct of the accused person. Earlier in *Rex v Tubere s/o Ochen* [1945] 12 EACA 63, the former Court of Appeal for Eastern Africa stated thus on the issue: It (the court) has a duty to perform in considering the weapon used and the part of the body injured, in arriving at a conclusion as to whether malice aforethought has been established, and it will be obvious that ordinarily an inference of malice will flow more readily from the case, say, of a spear or knife than from the use of a stick.....”

34. PW8 stated that when the accused was arrested, he volunteered to take the police officers to his house to give them the murder weapon which was a knife. However, when they went, they found an irate mob destroying the house and they returned the accused person to the police station to secure his life. That when they returned the following morning, they found that the house of the accused had been razed down by the fire and the murder weapon was never recovered.

35. If malice is to be inferred from the nature of injuries, PW10 stated that the body of the deceased had a severed tongue and deep cuts on the upper and lower limbs and there were cuts on the elbows and wrists of both hands. From his testimony, it is possible that there might have been more injuries to the neck but decomposition was so severe and this was not established. However, from the injuries documented, it was still PW10’s professional opinion that the cause of death was due to excessive bleeding. Since



there is sufficient evidence placing the accused at the scene inflicting the injuries on the deceased, it is sufficient to safely conclude that the accused had malice aforethought.

36. The testimony of PW6 is crucial in this case and it is believable. I have perused the statement he gave to the police during the investigations and the testimony he gave in court. The 2 statements are consistent and they relay the facts with accuracy. I have also examined his evidence alongside all the other evidence adduced and, in my view, he is a believable witness. In his statement to the police and as repeated in court, he stated that his clothes were stained with the blood of the deceased when the accused cut him. The government analyst's findings on the blood found on his clothes are inconclusive, but this does not discredit the fact that PW6 was present at the scene when the crime was committed. It is also PW6 who showed the police the location of the crime scene and he explained the injuries that the accused inflicted on the deceased which tallied with the evidence that was given by the pathologist. It is also worth noting that his evidence led to the discovery of the body. The court observed the demeanor of PW6 and believed his evidence. I also note that PW6 stated that there is no bad blood between him and the accused such that he would implicate him for the murder of the deceased.
37. For good order, I should address the defense of the accused person. In his defense, he stated that he was going about his business as usual when he was arrested by the police in line with the disappearance and death of the deceased. I have considered his defense and note that the same has not dislodged the evidence of the prosecution in any way. The role of the defense is to punch holes into the evidence of the prosecution with the aim of creating reasonable doubt and if any is created, the benefit should be given to the accused person. The accused stated that the deceased is not dead and that the body that was recovered is not of the deceased but that of another person. This evidence cannot be true for the reason that the government analyst, in her report, stated that the body belonged to the son of PW2. The evidence available to the court is that PW1 was not the biological father of the deceased and that explains why the DNA did not connect him with the deceased but it connected the deceased with PW2 who is the mother.
38. In the end, having considered the evidence before me and the relevant laws, it is my finding that the prosecution has proved the offence of murder beyond reasonable doubt. The accused is therefore found guilty of the offence of murder contrary to section 203 of the Penal Code and is hereby convicted accordingly.
39. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 17<sup>TH</sup> DAY OF APRIL, 2024.**

**L. NJUGUNA**

**JUDGE**

.....for the State

.....for the Accused Person

