



**DPP v Sorochi (Criminal Case 41 of 2018) [2024] KEHC 5507 (KLR) (17 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5507 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA**

**CRIMINAL CASE 41 OF 2018**

**PJO OTIENO, J**

**MAY 17, 2024**

**BETWEEN**

**DPP ..... PROSECUTOR**

**AND**

**BIBIANA MANGULA SOROCHI ..... ACCUSED**

**JUDGMENT**

1. The accused person is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence were given to be that on diverse dates between 14<sup>th</sup> and 15<sup>th</sup> day of July, 2018 at Navakholo Trading Centre in Bunyala Central sub location, Nambacha location within Navakholo sub county of Kakamega County, the accused person murdered BONFACE RUPIA ANGOLI.
2. The accused person pleaded not guilty to the charge and in order to discharge the burden of proof under Section 107(1) of the *Evidence Act*, the prosecution tendered evidence from eight witnesses.
3. PW1, John Angoli Echesa in his sworn evidence testified that he was the father to the deceased who was in his house asleep in the company of his wife on 1/7/2018, at about 1AM, he was woken up by his son, Lius Agoli, who informed him that he had received a call from Navakholo to the effect that the deceased had died. He was informed that the deceased had been stabbed to death.
4. The following morning, he headed to Kakamega County Mortuary where he identified the body of the deceased and a post mortem was thereafter conducted. He stated that the accused had been married to the deceased for about one and a half years and was not aware of any differences between the two though he stated that he knew it was the accused who killed the deceased because after the incident the accused disappeared. He later heard over the radio that the deceased died in his house. His evidence attracted no cross-examination.
5. PW2, Belinda Awuor Onyango testified that she was an enforcement officer with the County Government of Kakamega, who on 14/7/2018, at about 11PM, was in her house with her boyfriend



when one Michael Bwire in the company of his girlfriend Sheila, woke her up and informed her that Michael needed to go to the deceased's house because the deceased had stabbed himself with a knife. Because Michael's phone was with the deceased he used her phone to call a police corporal and inform him of the news.

6. The following day, 15/7/2018, she headed to the deceased's house at about 6AM and found the deceased's body had already been carried away and there was a lot of blood on the floor and a blood stained knife in the bedroom. She then headed to Navakholo Police Station where she recorded her statement. She further stated that she had known the accused as the deceased's wife for two years. The too lived happily but used to quarrel all the time with the accused accusing the deceased of cheating. She claimed that before the incident the accused and the deceased had quarreled and the accused took poison though the deceased took her to hospital and she was treated.
7. On cross examination she stated that the last time she saw the accused was on 13/7/2018 at the Navakholo Trading Centre adding that she had never witnessed the accused fight with the deceased and that they only quarreled all the time.
8. PW3, Michael Bwire Oloko, testified that he was also an enforcement officer with the Kakamega County Government and that on 14/7/2018 at 11PM he was the sub county office at Navakholo when his wife Sheila came to the office and informed him that she had received a call from a woman, the Accused herein, who told her that the deceased had stabbed himself with a knife. As he spoke to his wife the Accused again called his wife and he spoke to her and informed her that the deceased had stabbed himself and he was in the house which had not been locked. The witness went to PW2's house which was close to the station and he used her phone to call their boss. Afterwards they headed to the deceased's house where one Silvanus opened the door and they found the deceased's body lying on the floor with a suitcase beside him whereas the curtains to the windows and the door had been places on the seat and beside him was a knife. He claimed that the deceased was lying sideways and that he had his phone in his pocket. They then went and made a report at the Navakholo Police Station. He stated that he came to know the deceased in the year 2017 upon their employment by the County Government and that the deceased lived with the Accused as a wife. On how the deceased came to have his phone he explained that on 14/7/2018 at 3PM the Accused called him to tell the deceased that his relatives were in the house and they wanted to see him. The deceased did not have a cell phone. He conveyed the information to the deceased who asked him to lend him his phone which he had not returned at the time of his death. He further stated that the Accused was not in the house when they found the deceased's body.
9. On cross examination he reiterated that the Accused called him on 14/7/2018 at 3PM and that he gave his phone to the deceased at 4PM. He further stated that it was the police who removed his cell phone from the deceased's pocket and denounced his statement that it was the Accused who called his wife.
10. PW4 was Catherine Nanjowe Waomba who testified that she was a teacher and a neighbor of the deceased and the Accused and that on 14/7/2018 she got to her house at 4PM and found the door to her house locked prompting her to look for her children who were behind the hospital. While there she received a call from the Accused who called her to her place but when she got there the Accused denied her entry to her house alleging that the deceased was angry with her and accused the witness for being the reason for their quarrels. She insisted on talking to the deceased but the Accused denied her entry to her place forcing her to give up. She headed to her shop with the Accused informing her that she would pass by later but she did not. At around 10PM she was asleep when one Eunice, Christine and Sheila woke her up informing her that the deceased had died. They went to the deceased's house and found him lying on the bedroom floor with blood next to his body and a blood stained knife. She stated that there were bags packed on the seat and that the Accused was not present at the scene. The



- police then took the deceased's body to the mortuary. She added that she used to stay in the same plot with the Accused and the deceased until they moved to a different plot and that though initially the couple was peaceful, they began to quarrel and at one time the Accused took poison but recovered after medical intervention.
11. On cross examination she stated that the distance between her house and that of the deceased was about 200 meters. She further stated that before the police came and turned the deceased's body, she had not seen a knife as it was not visible and that she did not witness the police remove anything from the deceased's body.
  12. PW5, Christine Mwilolo gave evidence that she was a saloonist and that on 14/7/2018 at 10:48PM the Accused called her and thereafter a strange number called her and the caller identified herself as the Accused's mother. The caller told her that the Accused had just arrived in Kisumu and she had informed her that the deceased had stabbed himself and so she requested her to go and check if the deceased was alive. She went to the deceased's office and did not find anyone and on her way back she met with PW3 and informed him. She then went to the deceased's house where she found many people with the deceased's body lying next to the bed with blood and next to him was a blood stained knife. The police then took away the deceased's body and the Accused was not there at the time. She added that she had known the deceased and the Accused for one year and that the couple used to quarrel with the deceased informing him at one time that the Accused had taken poison. On the day of his death, she stated that the deceased had informed him that the Accused had left their house for two days without informing him where she was going and she promised him that she would talk to the Accused. She also stated that the Accused disappeared on the date the deceased died.
  13. On cross-examination she said that on the date of the incident the deceased informed her that he had not seen the accused for two days.
  14. PW6, Dr. Dixon Mchana testified that he was a Consultant Pathologist based at the Kakamega County General Hospital who was on 19/7/2018 called to and conduct and did an autopsy on the body of the deceased upon the body being identified for him by John Echesa and Josephat Wanga.
  15. On examining the body, he noted that externally, the deceased's tongue, nails and hips appeared blue in color, it had a single stab wound at the front of the left chest besides the breast bone and below the 3<sup>rd</sup> rib and which measured 2.5 x 1 cm. Internally, there was mild chipping of the breast bone with minimal bleeding into the chest and the lungs were not touched. The heart coverage was perforated at the front as well as on the left ventricle with clots in the heart. He formed the opinion that the deceased's cause of death was bleeding around the heart due to a stab wound following assault. He produced the post mortem report which was marked as PEXH 1.
  16. On cross examination he stated that he was of the opinion that the injury could not have been self-inflicted.
  17. PW7, Silvanus Sohero Kasungu testified that he works with the County Government as an enforcement officer and that on 1/7/2018 he was at home when he received a call from one Mike Bwire to the effect that he had received a call from the Accused informing that the deceased had stabbed himself with a knife and that he had locked himself in the house. Mike and his wife then joined him and they all proceeded to the deceased's house where he opened the door and turned on the lights and saw the deceased on the ground bleeding and when he called him and he failed to respond, he reported the incident at the police station. He confirmed having known the deceased since the year 2017 and was not aware of any differences between him and the Accused.



18. On cross-examination he stated that he saw a knife when the body of the deceased was being removed by the police and that he saw the police remove a phone from the deceased's pocket.
19. PW8, No. 81979 Sergeant Joshua Oyoo testified that on 14/15/7/2018 he received a call from one Sergeant Kiproop requesting him to accompany him at a scene of crime in Navakoholo following a report that the deceased had stabbed himself. They headed to the scene and on arrival they found the deceased lying on the bedroom floor in a pool of blood and the bedsheets on the bed were equally blood stained and there was a kitchen knife next to the deceased which he produced as PEXH 2. He stated that the deceased wore a black T-shirt with a green trouser and that in the sitting room was a suit case packed with female clothing placed on a sofa set and photos of the Accused were on the table and not hanged on the walls. The Accused was later arrested on 15/7/2022 at the Makunga Police Station where she had gone to make a report that her husband had stabbed himself.
20. On cross-examination he stated that the Accused was charged because she was the wife of the deceased who was with him when he met his death. He further stated that he did not establish if the knife was dusted for fingerprints and that the wife PW3 did not record a statement with the police.
21. On re-examination he stated that from the police file, nobody else had visited the house of the deceased on the material day.
22. On being questioned by the court he stated that PW3's wife received a call about the deceased having stabbed himself.
23. The evidence of PW8 marked the close of the prosecution case after which the court found that a prima facie case had been established against the Accused person and she was thus placed on defence. The Accused elected to give a sworn statement and called one additional witness in support of her case.
24. The Accused person testified as DW1. In the testimony she stated that the deceased was her husband and refuted claims that she killed the deceased. It was her evidence that on 14/7/2018 she had been living with her parents in Kisumu for about a week when she received a call from a lady using an unknown number who introduced herself as a police officer from Navakholo sub county informing her that her husband's dead body had been found lying in the house. She called her friend Sheila who confirmed the news and in as much as she was eight (8) months pregnant she travelled the next day to Navakholo and found that the body of the deceased had been moved to the mortuary and so she went to the police station to record her statement where she was arrested. She further stated that she had gone to her parent's home after differing with the deceased.
25. On cross-examination she stated that she had lived with the deceased for about five months and that she had differed with the deceased over his affair and had even caught him red handed at a bar with a lady. The night of 7<sup>th</sup>/8<sup>th</sup> August, 2018 the deceased did not return home. She added that on 8<sup>th</sup> August, 2018 she left her home for her parent's home and had not talked to the deceased since. She dismissed the evidence of PW1,2 and 3 to the effect that she called them to inform them that the deceased had stabbed himself.
26. On re-examination she clarified that the deceased did not return home the night of 7<sup>th</sup>/8<sup>th</sup> July, 2018 and that she travelled to her parent's home on 8<sup>th</sup> July, 2018. She further stated that when she received the news about the deceased's death, the only person she communicated to was one Sheila Mukabane.
27. DW2, Protus Sorochi Chitechi gave a sworn testimony and stated that the Accused was her daughter and a student at Maasai Mara University. He stated that she did not know the deceased but she had been told that he had married her daughter. He claimed that on the night of 14/7/2018 the Accused was with him at his home in Nyalenda Kisumu having stayed with her for about a week and that on



14/7/2018 at about 8PM the Accused received a call to the effect that her husband had died and that he looked for means to enable the Accused travel back to Navakholo.

28. On cross-examination he stated that he was not aware that the Accused was married and that he just learnt that she was in Navakholo when she arrived in Kisumu. He asserted that the Accused arrived in Kisumu at about 4PM pregnant and carrying a bag and that when the Accused received a call on 15/7/2018 she claimed that it was her neighbor who had called her. He also stated that he was not aware that his wife was making calls to witnesses.
29. On re-examination he reiterated that he was with the Accused for one week before she left on 15/7/2018.
30. The defence closed their case with the evidence of the two witnesses. The court then directed parties to file and exchange Submissions and the directions were duly complied with.

### **Submissions by the Prosecution**

31. It is the submission by the prosecution that it had proved the offence of murder against the Accused in that; the death of the deceased was proven by the post mortem report and two witnesses namely John Angoli Echesa and Josphat Angaiywa Wanga who both identified the body for autopsy purposes. On whether the death of the deceased was occasioned by an unlawful act they submit in the affirmative by stating that according to the post mortem report the deceased's cause of death was a stab wound on the chest following assault. On whether the Accused person was properly identified as the person who caused the death of the deceased they submit that their evidence is hinged on circumstantial evidence and that PW1, PW2 and PW3 told the court that they received phone calls from a stranger who identified herself as mother to the Accused informing them to check on the deceased since the Accused had informed her that the deceased had stabbed himself and when PW1, PW2 and PW3 went to the deceased's house they found him dead. They further submitted that the Accused testified that she suspected the deceased of cheating and that they quarreled over the matter. They argue that the evidence of alibi by DW2 that he was with the Accused at the time of the deceased's death which evidence they contend was introduced for the first time at the defense hearing failing the test set out by the Court of Appeal in the case of Eric Otieno Meda v Republic (2019) eKLR which held that the evidence of alibi needs to be introduced at an early stage yet in this case the offence happened in July 2018 and the alibi evidence was introduced in November 2023 during the defense hearing and the prosecution was not given the benefit to test the alibi evidence. They submit that the Accused was agitated with the behavior of her husband, killed him and fled from the scene to create an alibi but still called people to ask them to check on her husband as he had stabbed himself.
32. On the last element of malice aforethought, they argue that it can be inferred from the cause of death which was a stab wound to the chest consistent with assault and the fact that there were no defensive wounds.

### **Accused Persons' Submissions**

33. It is her submission that the circumstantial evidence proffered by the State does not meet the threshold to convict her for the reason that the evidence by the prosecution witnesses is hearsay, PW1 stated that he was told that his son, the deceased, had died by committing suicide. The evidence on record is insufficient as to whether the death of the deceased arose out of self-inflicted injuries or injuries inflicted by a third party and that the state did not advance any evidence to prove that there was a mobile phone communication between the Accused and PW3.



## Issues for Determination

34. The offence of murder as defined by section 203 of the penal Code occurs when any person, who of malice aforethought, causes death of another person by an unlawful act or omission .
35. For the prosecution to sustain a conviction, all the elements of the offence coded in section 203 of the penal code ought to be proved beyond reasonable doubt.
36. The Prosecution has the obligation to prove the fact of death of the deceased; prove that the death was out of unlawful acts or omissions linked and attributed to the Accused and lastly that in so acting or omitting the act the Accused was propelled, with what the law calls malice aforethought.
37. There is no contention that Bonface Rupia Angoli is deceased. His death was confirmed by John Angoli Echesa and Josphat Angaiywa Wanga who both identified the body for autopsy purposes and the autopsy report dated 18/7/2018 which captures that the deceased died on 15/7/2018. In fact all witnesses including the defence witness confirm that he is indeed deceased. The first element of the offence is thus sufficiently proved. On whether the death was as a result of an unlawful act, the evidence proves that the death was as a result of stabbed wound inflicted by a knife. That suggests an assault which is not only unlawful but indeed criminal.
38. It was the testimony of the pathologist, Dr. Dixon Mchana PW6, that he formed the opinion that the deceased's cause of death was bleeding around the heart due to a stab wound following assault. The deceased's death unnatural and thus unlawful if results from assault. The court finds that the death having not been natural and possibly out of assault, the same was occasioned by unlawful acts.
39. From the evidence tendered by the prosecution witnesses, it is clear that none of the witnesses saw the Accused or any other person kill the deceased. The prosecution's case in thus hinged on circumstantial evidence. For circumstantial evidence to suffice, the same must unerringly point to nothing but the guilt of the Accused.
40. The Court of Appeal in *Ahamad Abolfathi Mohammed and Another v Republic* [2018] eKLR reiterate the prevailing position of the law in that aspect as follows: -

“However, it is a truism that the guilt of an Accused person can be proved by either direct or circumstantial evidence. Circumstantial evidence is evidence which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence can form a strong basis for proving the guilt of an Accused person just as direct evidence. Way back in 1928 Lord Heward, CJ stated as follows on circumstantial evidence in *R v Taylor, Weaver and Donovan* [1928] Cr. App. R 21: -

‘It has been said that the evidence against the Applicant is circumstantial. So it is, but circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by intensified examination is capable of proving a proposition with the accuracy of mathematics. It is no derogation from evidence to say that it is circumstantial.’”
41. The conditions for the application of circumstantial evidence in order to sustain a conviction was earlier laid down in *Abanga alias Onyango v. Republic* CR. App NO. 32 of 1990(UR) where the court held as follows:

“It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests: (i)the circumstances from which an inference of guilt is sought to



be drawn, must be cogently and firmly established, (ii) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (iii) the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.”

42. The Prosecution appears to draw an inference of the guilt on the Accused person from the phone call her mother allegedly made to PW5 informing her to check on the deceased as he had stabbed himself. That information PW5 conveyed to other witnesses and which information turned out to be true. There was equally the evidence of PW3 that his wife was called by the Accused and told that the deceased had stabbed himself with a knife. More compelling is the evidence of PW4 a neighbor and one well known to the Accused. She was called by the Accused, went to the house Accused lived in with the deceased, and spoke to the Accused who refused her entry into the house but spoke to her and told her about the deceased being angry and that the witness was the cause of the difference between the couple.
43. PW1, PW2, PW3, PW4, PW5 and the Accused person all confirmed that the deceased and the Accused person were married.
44. PW2, PW4, PW5 and even the Accused person herself all confirmed that the deceased person and the Accused person would often quarrel with the accused person stating that they last quarreled because the deceased was having an affair and he had caught him red handed with another woman at the bar.
45. For the court, there ought to be evidence, direct or circumstantial to connect the Accused with the death. Having not been seen assault the deceased there may be no direct evidence but circumstantial. On the evidence of PW3, 4 and 5, the Accused was demonstrated, beyond reasonable doubt to have been the last person seen with the deceased alive. In fact, PW3’s evidence confirm that the deceased left his company to go to the house, after being called by the Accused and was never seen alive again. The court invites the principle of last seen.
46. The Accused person stated that this quarrel happened a week to the deceased’s demise and following the quarrel she moved to her parent’s home in Nyalendo, Kisumu. In fact, the father testified on 8<sup>th</sup> November, 2023 as an alibi to the Accused person whereas the incident happed on 14<sup>th</sup> July, 2018. The East Africa Court of Appeal in addressing the defence of alibi in the case of R v Sukha Singh S/o Wazer Singh & Others {1939} 6 EACA 145 had this to say;

“If a person is accused of anything and his defence is an alibi, he should bring forward that alibi as soon as he can because, firstly, if he does not bring it forward until months afterwards, there is naturally a doubt as to whether he has not been preparing it in the internal and secondly, if he brings it forward at the earliest possible moment it will give the prosecution an opportunity of inquiring into that alibi and if they are satisfied as to its genuineness, proceedings will be stopped.”
47. The defence of alibi was raised by the Accused person almost five years after incident. Was the defence an afterthought? I do agree with the prosecution that the defence of alibi by the Accused person came late in the day thus denying the prosecution the chance to interrogate and scrutinize the said evidence and for that reason that I find the defence of alibi inadmissible.
48. I do find the evidence of alibi an afterthought and the evidence of DW2 untruthful for the reason that PW2 stated that she saw the Accused person on 13/7/2018 at the Navakholo Trading Centre while PW4 was with the Accused on 14/7/2018 and on that day the Accused person called PW4 to her house but then she could not allow her in. PW3, PW4, PW5 and PW8 all confirmed that the deceased was not



at the scene of crime but they all confirmed that there was a suit case besides the deceased's body and PW8 stated that the suitcase had a woman's clothing. The Accused lived with the deceased as husband and wife. That means that the clothes in the suit case must have belonged to the Accused person. The Pathologist stated that there was no way the stab wound on the deceased's body was self-inflicted. Here is what I think happened. The deceased might have been having an affair and as the Accused person stated the deceased had failed to return home for two days and so when the Accused person called the deceased's colleague asking him to tell the deceased to head home, the Accused person had packed her belongings wanting to leave and when the deceased got home a quarrel ensued with the Accused getting a knife and stabbing the deceased on the chest. Confused, the Accused calls PW4 to her house perhaps to tell it all but then has a change of heart and runs to her parent's home in Kisumu in panic.

49. The court is thus satisfied and holds that the prosecution has proved, beyond reasonable doubt, that it was the Accused person who assaulted the deceased leading to his death.

**Whether the accused person was actuated with malice afore thought in causing the death of the deceased**

50. The elements of malice aforethought are set out in section 206 of the Penal Code to be as follows: -

- “(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.”

51. In the case of Republic v Tubere S/O Ochen [1945] 12 EACA 63, the East African Court of Appeal set out the circumstances in law under which malice aforethought can be inferred:

- a. The nature of the weapon used (whether lethal or not).
- b. The part of the body targeted (whether vulnerable or not).
- c. The manner in which the weapon is used (whether repeatedly or not).
- d. The conduct of the accused before, during and after the attack.

52. It was the testimony of Dr. Mchana that the deceased had a single stab wound at the front of the left chest besides the breast bone and below the 3<sup>rd</sup> rib and which measured 2.5 x 1 cm. PW8 testified that there was a knife at the scene. The fact that the Accused used a knife to stab the deceased on the chest demonstrates malice aforethought. DW2 stated that the Accused person was a student at the Maasai Mara University and that means that she could comprehend that her actions would have lethal effects.

53. Accordingly, the court find the Accused person guilty for the offence of murder as charged and convict her accordingly.

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



**PATRICK J. O. OTIENO**

**JUDGE**

In the presence of:

Ikhumba for Nafuye for Accused

Ms. Chala for the Prosecution

Accused present

Court Assistant: Polycap

