



**Director of Public Prosecutions v Karingo (Criminal Case
E004 of 2023) [2024] KEHC 6165 (KLR) (16 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 6165 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE E004 OF 2023
TW CHERERE, J
MAY 16, 2024**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTIONS PROSECUTOR

AND

JOSHUA THURANIRA KARINGO ACCUSED

JUDGMENT

1. Joshua Thurania Karingo (Accused) is charged with the offence of murder contrary to Section 203 as read with section 204 of the [Penal Code](#) CAP 63 of the Laws of Kenya in that he murdered one Onesmus Muthomi on 15th June, 2020.
2. The first witness, Jackson Mwenda stated that on the night of 15th June, 2020 at about 11.00 pm, he heard screams inside the house of Accused that was locked from inside and recognized the voice of the person screaming as that of Muthomi who was his neighbour. The witness informed Muthomi's wife of the incident. He returned to the scene in company of Muthomi's wife and Accused opened the door and escaped leaving Muthomi in the house.
3. Muthomi's wife Doreen Mwari stated upon receiving PW1's report, she accompanied him to Accused's house which Accused opened and escaped. That they found Muthomi with hands were bound at the back and she noticed that he had injuries on his head and hands. That later, Muthomi complained of headache, collapsed in the house and was taken to hospital where he died on 16th June, 2020.
4. Joshua Michubu Kirea, Muthomi's brother stated he visited Muthomi who had an injury on the head on 16th June, 2020 and he informed him that he had been assaulted by Accused. He later died.
5. CPL Henry Njuguna investigated the case and Accused was subsequently arrested on 29th December, 2022 and charged. He tendered an autopsy report PEXH. 1 filled by Dr. Kaberia which reveals that Muthomi suffered bruise on left arm hematoma extending from the frontal hemisphere to the



temporal region on the right side and intracerebral hemorrhage with hematoma on the right lateral ventricle due to blunt head trauma which caused increased intracranial pressure from which he died.

6. In his defence, Accused confirmed that Muthomi was his neighbour and distant relative. He also confirmed that Muthomi used to take care of his house when he was away from home. Accused further confirmed that he had gone to drink alcohol with Muthomi on the 15th June, 2020 and they had retreated to his house at about 07.00 pm to chew miraa. He additionally confirmed that Muthomi's wife went to his house on the material night. He denied assaulting Muthomi and stated that Muthomi fought with his wife who was accusing him of using Accused's house as a brothel. Accused stated he left home to save his life after his house was torched by Muthomi's relatives who accused him of killing Muthomi and confirmed he was arrested over two years later and charged.

ANALYSIS AND DETERMINATION

7. At the trial, the burden is always on the prosecution to prove that Accused was a significant contributing factor of the deceased's death and an accused person assumes no burden to prove his innocence. Any doubt raised by an accused person is to be given to that accused.
8. I have considered the evidence on record and the issues for determination is whether the DPP has proved the three main ingredients of murder i.e the death, that Accused person/s committed the murder and that they were actuated by malice. (See *Anthony Ndegwa Ngari v Republic* [2014] eKLR).
9. In *Republic vs Andrew Muecha Omwenga, Maraga J* (as he then was) considered the provisions of section 203 of the *Penal Code* and expressed himself as follows with respect to what the prosecution must prove to establish the offence of murder:

“It is clear from this definition that for an accused person to be convicted of murder, it must be proved that he caused the death of the deceased with malice aforethought by an unlawful act or omission. There are therefore three ingredients of murder 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.”

- a. The death of the deceased
10. That Muthomi died was confirmed by a postmortem form PEXH. 1 which reveals that he died of increased intracranial pressure secondary to hematoma extending from the frontal hemisphere to the temporal region on the right side and intracerebral hemorrhage with hematoma on the right lateral ventricle due to blunt head trauma.
 - b. Proof that accused person either jointly or severally committed the unlawful act which caused the death of the deceased
 11. In order to establish the accused's culpability, the prosecution relied on the evidence by PW1 and PW2 who stated that they rescued Muthomi who had an injury on the head and had his hands were bound to the back from Accused's house on the night of 15th June, 2020. Accused confirmed he was in his house with Muthomi on the material night therefore confirming the evidence by the prosecution witnesses that he was at the scene of crime as rightly corroborated by the two prosecution witnesses.
 12. Whereas Accused's defence was that Muthomi was injured in a fight with his wife, it is worth noting that Accused did not cross-examine Muthomi's wife concerning the said allegation. The allegation was only raised at the time Accused gave his defence thereby denying Muthomi's wife the opportunity to confirm or deny the allegation that she inflicted the injuries from which Muthomi died.



Having considered the defence, I find that it is an afterthought that does not cast doubt on the well corroborated evidence by PW1 and PW2 and it is rejected.

Malice aforethought

13. Concerning malice aforethought, the Court of Appeal in *John Mutuma Gatobu v Republic* [2015] eKLR stated as follows:

“That leaves the question of malice aforethought. With respect to the appellant’s learned counsel, malice aforethought in our law is used in a technical sense properly defined under Section 206 of the *Penal Code* thus;

“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 cause 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.”

The court further stated that:

There is nothing in that definition that denotes the popular meaning of malice as ill will or wishing another harm and all the related negative feelings. Nor, for that matter, is it to be confused with motive as such. Our law does not require proof of motive, plan or desire to kill in order for the offence of murder to stand proved, though the existence of these may go to the proof of malice aforethought.

14. I am satisfied from the nature of the injuries occasioned to Muthomi’s head that Accused did inflict them with no other intention other than to cause him death and that demonstrates malice aforethought on Accused’s part.
15. In the end, I find the prosecution case proved and Accused is found is guilty of the offence of murder Contrary to Section 203 as read with Section 204 of the *Penal Code* and he is convicted under Section 322 (2) of the *Criminal Procedure Code*.

DELIVERED AT MERU 16th DAY OF May 2024

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

Accused - Present

For Accused - Ms. Kaunyangi Advocate



