



**Director of Public Prosecutions v Lawi (Criminal Case
E006 of 2023) [2024] KEHC 5600 (KLR) (9 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5600 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE E006 OF 2023
TW CHERERE, J
MAY 9, 2024**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTIONS PROSECUTION

AND

MOGAKA LAWI ACCUSED

JUDGMENT

1. Mogaka Lawi (Accused) is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#) in that he murdered Evana Learka on the night of 30th and 31st December, 2022 at an unknown time at Town B village within Sereolipi Location in Samburu East Sub County within Samburu County.
2. The accused denied committing the offence of Murder as charged and the prosecution has called a total of five witnesses and closed its case today, the 21st February, 2023

Prosecution case

3. PWI Bokacha Lemerekelo stated that Accused was lover to her cousin Evana Learka (Evana). He recalled that on 28th December, 2022, he was at the home of Evana when Accused who looked intoxicated arrived at around 09:00 pm and 10:00pm. That immediately after his arrival, Accused and Evana after she failed to serve him dinner on the ground that there was no food in the house.
4. The witness stated that he left the couple quarrelling and retreated to her house and slept. That at around 01:00 am her cousin Gregory came knocked on her door and asked for his torch. That she woke up and in company of Evana's daughter Tyra they went to Evana's house to collect the torch and it was there that they found the house spattered with blood with Evana's lifeless body lying on the bed with the neck almost completely cut off. That she saw a Kitchen knife next to Evana's body and noticing that Accused was not at home at reported the incident to the police the same night.



5. Evana's daughter Tyra Leyara recalled that on 30th December, 2022, Accused arrived home at around 10.00 pm and found her with her sister aged 3-year-old sister and Bokacha. That her mother Evana arrived immediately thereafter and Accused who was peeling potatoes quarreled Evana since there was no food for dinner. That the witness went to sleep and later in the night when she returned to her mother's house to collect a torch, she found her mother's lifeless body with the neck almost severed lying on the bed and next to it was a kitchen knife.
6. Gregory Lianka, Evana's brother on the night of 30th and 31st December, 2022 went to collect his torch from Evana's house and on getting no response from there called Evana's daughter to pick it for him. That upon entering the house, Evana's daughter rushed out screaming that her mother had been killed. The witness entered the house and saw his sister's body with the neck almost cut of lying on the bed with a kitchen knife next to it. Matter was reported to the police who visited the scene and removed the body to the mortuary.
7. C.I Macmillan Chimbero, the investigating officer visited the murder scene on the material night and removed Evana's body to Isiolo Hospital Mortuary. Accused was subsequently arrested on 05th October, 2023 and was charged.
8. A post mortem conducted by Dr. Mohammed on Evana's body on 06th January, 2023 revealed that she suffered clear cut wound on the throat/anterior neck which exposed major blood vessels, trachea and esophagus from which the pathologist concluded that the deceased death was due to excessive loss of blood due to the cut on her throat severing major blood vessels.

Defence case

9. In his sworn defence, Accused stated that he quarreled with his wife Evana concerning his money that she had spent and, in the process, fatally injured her with a knife.

Analysis and determination

10. Section 203 and 204 of the *Penal Code* under which the accused is charged provide for the offence of murder and the punishment for it. They require that the prosecution prove beyond reasonable doubt that the accused by an unlawful act or omission caused the death of the deceased through malice aforethought.
11. I have considered all the evidence availed in this case as set out above and the issue in question is whether the prosecution has proved the death of the deceased; that Accused persons caused the death and that they were actuated by malice. (See *Roba Galma Wario v Republic* [2015] eKLR and *Republic v Mohammed Dadi Kokane & 7 others* [2014] eKLR).

a. The death of the deceased

12. The postmortem form tendered in evidence Pexh. 1 reveals that that Evana suffered a clear-cut wound on the throat/anterior neck which exposed major blood vessels, trachea and esophagus from which the pathologist concluded that the deceased death was due to excessive loss of blood due to the cut on her throat severing major blood vessels.

b. Proof that accused person committed the unlawful act which caused the death of the deceased

13. Accused admitted that he committed committed the unlawful act which caused the death of Evana.



Malice aforethought

14. 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.

15. I am satisfied from the nature of the injuries occasioned to Evana that the Accused did inflict them with no other intention other than to cause her death and that demonstrates malice aforethought on his part.
16. In the end, I find that 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*.

DATED THIS 09TH DAY OF MAY 2024

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

Accused - Present

For Accused - Mr. Thuo Advocate

For DPP - Ms. Rita (PC 1)

