



**Director of Public Prosecutions v Kinya (Criminal Case  
80 of 2019) [2024] KEHC 7210 (KLR) (13 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7210 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL CASE 80 OF 2019  
TW CHERERE, J  
JUNE 13, 2024**

**BETWEEN**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... PROSECUTOR**

**AND**

**DORIS KINYA ..... ACCUSED**

**JUDGMENT**

1. Doris Kinya (Accused) is charged with offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code in that with others not before the court, she murdered one Kathurima Gikunda on 13<sup>th</sup> October, 2019 at Kibirichia Market in Buuri Sub County within Meru County.
2. Accused denied the offence and the prosecution has called a total of five witnesses.
3. Rael Wanja Kubai stated he found Kathurima who was dead with a mosquito net around his neck outside Accused's house on the morning of 14<sup>th</sup> October, 2019 and did not know how he died. Joseph Mbaabu and Glory Karimi also saw Kathurima dead outside Accused's house and didn't know how he met his death.
4. Doreen Nkatha stated she spent the night of 13<sup>th</sup> and 14<sup>th</sup> October, 2019 in Accused's house and they had found Kathurima who was dead with a mosquito net around his neck outside Accused's house on the morning of 14<sup>th</sup> October, 2019. She similarly said she did not how Kathurima died.
5. Photographs of the scene were produced as PEXH. 2. A postmortem PEXH. 4 filled by Dr. Njeri Ndetere on 17<sup>th</sup> October, 2019 reveals that Kathurima died of asphyxiation due to hanging.
6. In his sworn defence, Accused denied the offence. Accused stated she was previously Kathurima's lover but they had separated as a result of which she denied him entry to her house on the night of 13<sup>th</sup> October, 2029 only for find him hanging dead by her front door the following morning.



## **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).
  - a. The death of the deceased
9. That Kathurima died was confirmed by a postmortem form PEXH. 4 dated 17<sup>th</sup> October, 2019 which reveals that Kathurima died of asphyxiation due to hanging.
  - b. Proof that accused person either jointly or severally committed the unlawful act which caused the death of the deceased
10. None of the prosecution witnesses saw Accused or anyone else kill Kathurima.
11. The evidence on record reveals that the only reason that Accused was charged was that she was previously Kathurima's lover and he had died at her door. There is therefore no doubt that Accused was charged on the basis of suspicion. In *Sawe vs. Rep* [2003] KLR 364 the Court of Appeal held:

“Suspicion, however strong, cannot provide the basis of inferring guilt which must be proved by evidence beyond reasonable doubt.”
12. In *R. vs. Kipkering Arap Koske & Another* [1949] 16 EACA 135, the Court of Appeal for Eastern Africa had this to say:

“In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt. The burden of proving facts which justify the drawing of this inference from the facts to the exclusion of any reasonable hypothesis of innocence is on the prosecution, and always remains with the prosecution. It is a burden which never shifts to the party accused.”
13. The onus to adduce evidence under Section 107 (1) of the *Evidence Act* to establish the guilt of the accused remains on the prosecution throughout the trial. The degree of proof is one that is beyond reasonable doubt within the scope of the principles in *Woolmington v DPP* (1935) AC 485 and as stated by Lord Denning J in *Miller v Minister of Pensions* (1947) 2 ALL ER 372

“That degree is well settled. It need not reach certainty, but it must carry a high degree of probability proof of beyond reasonable doubt does not mean proof beyond a shadow of doubt. The Law would fail to protect the community if it admitted fanciful possibilities to defect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course it is possible but not in the least probable, then the case is proved beyond reasonable doubt, but nothing short of that will suffice.”

offered by the appellant, I am not persuaded that the conviction was justifiable and that this is a case where the accused ought to have been given the benefit of doubt. To give an accused



person the benefit of doubt in a criminal case, it is not necessary that there should be many circumstances creating the doubt(s). A single circumstance creating reasonable doubt in a prudent mind about the guilt of an accused is sufficient. The accused is entitled to the benefit of doubt not a matter of grace and concession, but as a matter of right. An accused person is the most favourite child of the law and every benefit of doubt goes to him regardless of the fact whether he has taken such a plea. Reasonable doubt is not mere possible doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence leaves the mind of the court in that condition that it cannot say it feels an abiding conviction to a moral certainty of the truth of the charge.”

14. From the evidence on record, I find that the prosecution has failed to link Accused to the death of Kathurima.

**Malice aforethought**

15. The prosecution having failed to prove actus reus’, it would be futile for this court to delve into the issue of malice aforethought.
16. From the foregoing analysis, I find Accused NOT GUILTY of the offence of murder Contrary to Section 203 as read with Section 204 of the Penal Code and hereby acquit him under Section 322 (1) of the Criminal Procedure Code.
17. Accused shall be set at liberty unless otherwise lawfully held.

DELIVERED AT MERU 13<sup>th</sup> DAY OF June 2024



**WAMAE. T. W. CHERERE**

**JUDGE**

**Appearances**

**Court Assistants - Kinoti/Munene**

**Accused - Present**

**For Accused persons - Mr. Ng’entu Advocate**

**For DPP - Ms. Rita Rotich (PC-1)**

**Page 3 of 6**

