



**Director of Public Prosecution v MK (Criminal Case 93 of 2017)
[2024] KEHC 7037 (KLR) (6 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7037 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE 93 OF 2017
TW CHERERE, J
JUNE 6, 2024**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTION PROSECUTOR

AND

MK ACCUSED

JUDGMENT

1. MK (Accused) is charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code in that on 07th November, 2017 at Kanuni Location Igembe SouthSub –County within Meru County murdered JG.
2. This case relates to an unfortunate incident for the reason that Accused is sister to JG(deceased). Julia Tirindi who is mother to the Accused and JG (G) stated that on the material date, G arrived home at about 10.00 am and after exchanging pleasantries with her went to the house of his sister Accused herein. She stated that G was standing outside Accused’s door when Accused without provocation stabbed him on the back of leg as a result of which he fell and bled profusely. MK, sister to G and Accused was attracted to the scene by her mother’s screams. She rushed to the scene to find G lying down writhing in pain. Her mother informed her that G had been stabbed by Accused. SK, who is G’s widow arrived at the hospital G was taken for treatment to find that he had already died.
 1. Dr. Wachira conducted an autopsy on G’s body on 14th November, 2017. He found that he had suffered a stab wound on left leg severing both the popliteal artery and vein. The postmortem form tendered as PEXH. 1 reveals that G died of hypovolemic shock (a dangerous condition that happens when you suddenly lose a lot of blood or fluids from your body) due to hemorrhage via severed popliteal vessels.



Defence Case

4. In her defence, Accused other than recall that she had a brother called G appeared out of touch with what was happening in court.

Analysis and Determination

5. 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.
6. 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.
7. The standard of proof in criminal case such as this one must be beyond reasonable doubt enough to lead to a conviction. Our criminal justice system is pegged on Article 50(2) (a) of the Constitution which guarantees individual freedoms under the Bill of Rights, particularly, the aspect of innocence until proven guilty. It cannot be gainsaid that this burden of proof rests on the State and does not shift to the Accused.
8. Lord Denning in the case of *Miller vs. Minister of Pensions (1942) A.C.* stated as follows: -

“It need not reach certainty but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadows of doubt. The law would fail to protect the community if it admitted forceful possibilities to deflect the course of justice. If the evidence is so forceful against a man 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, the case is proved beyond reasonable doubt but nothing short of that will suffice.”
9. The degree of proof in criminal cases was properly established in the classicus English case of *Woolmington vs. DPP 1935 A C 462*. Similarly, in *Bakare vs. State 1985 2NWLR*, Lord Oputa of the Supreme Court of Nigeria adopted the principle as follows at page 465: -

“Proof beyond reasonable doubt stems out of the compelling presumption of innocence inherent in our adversary system of criminal justice. To displace the presumption, the evidence of the prosecution must prove beyond reasonable doubt that the person accused is guilty of the offence charged. Absolute certainty is impossible in any human adventure, including the administration of criminal justice. Proof beyond reasonable doubt means just what it says it does not admit of plausible possibilities but does admit of a high degree of cogency consistent with an equally high degree of probability”.
10. The incident in which Accused stabbed her brother was witnessed by her mother and there is therefore no doubt that the murder was committed by Accused.
11. In order to determine whether Accused is criminally responsible for the murder, I have considered Section 9 of the Penal Code Cap 63 Laws of Kenya which provides as follows: -

Intention and motive



1. Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident.
12. Section 11 of the same Act provides-

Presumption of sanity

Every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved.
13. Section 12 of the same Act provides:

Insanity

A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is through any disease affecting his mind incapable of understanding what he is doing, or of knowing that he ought not to do the act or make the omission; but a person may be criminally responsible for an act or omission, although his mind is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects above mentioned in reference to that act or omission.
14. Under the Act, insanity is a defence if at the time of the commission of the act, the accused person was labouring under such a defect of reason, from a disease of the mind, as not to know the nature and quality of the act he/she was doing; or, if he/she did know it, that he/she did not know he/she was doing what was wrong.
15. I have considered the medical evidence availed in court and it is apparent that Accused remained unfit from the time of her arraignment and throughout the time of the trial.
16. Having considered the evidence at the trial court alongside the testimony of the other witnesses as to the Accused's state of mind as well my own observation of the Accused during the trial, the presumption, under section 11 of the Penal Code, that Accused was of sound mind at the time of the murder was rebutted.
17. Although the defence of insanity did not appear to have been expressly raised, it was, as already mentioned, a recurring theme throughout the trial.
18. Judicial opinion is divided on the constitutionality of the provisions of section 167(1)(b) of the Criminal Procedure Code which requires an insane person to be convicted and ordered to be detained during the President's pleasure because insanity was an illness (mental illness) requiring treatment rather than punishment.
19. I have considered the finding of the court of Appeal in [*Wakesho v Republic \[2021\] KECA223 \(KLR\) Criminal Appeal 8 of 2016*](#) where the court held that it was a legal paradox to find a person guilty but insane, in light of the requirements of criminal responsibility and culpability, which required that for a person to be criminally liable, it had to be established beyond reasonable doubt that he or she committed the offence or omitted to act voluntarily and with a blameworthy mind.
20. From the foregoing, this court finds Accused not guilty for reason of insanity.



21. It is hereby therefore ordered that Accused be immediately taken to a mental hospital for medical treatment where she is to remain until such time as a psychiatrist certifies that she was no longer a danger to society or to herself.

DELIVERED AT MERU THIS 06TH DAY OF JUNE 2024.

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

Accused - Present

For Accused - Mrs. Ntarangwi for Mr. Wamache Advocate

For DPP - Ms. Rita (PC 1)

