



**Republic v Mukira & another (Criminal Case E004 of 2021)
[2024] KEHC 8495 (KLR) (9 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8495 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CRIMINAL CASE E004 OF 2021**

LW GITARI, J

JULY 9, 2024

BETWEEN

REPUBLIC PROSECUTOR

AND

SULEIMAN MAITI MUKIRA 1ST ACCUSED

MICHAEL NGUGI RIUNGU 2ND ACCUSED

JUDGMENT

1. The accused person Michael Ngugi Riungu is charged with Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. The particulars are that on 17/1/2021 at Kiroo Sub-Location, Maara Sub-County within Tharaka Nithi County, the accused unlawfully murdered Deborah Kagendi Kinenei.
3. The accused person denied the charge. The accused was initially charged together with Suleiman Mati Mukira who was the first accused. However the State withdrew the charge against him and treated him as State Witness

Brief Facts:

4. The deceased in this case is a minor who was aged eight years at the time of this incident. On 17/1/2021 the deceased left the church and passed by the home of one Suleiman Mati to collect a milk Jerrycan which she had left at the home after delivering milk to him. While at the home, she was violently attacked by the accused for no apparent reason. The accused cut the deceased severally and de-capitated her head from the rest of the body. In a bizarre act the accused took the body and started drinking her blood. The accused was saying that he wanted to eat her liver. The accused then dragged her body to a goat shed where he cut the goat and started drinking the blood. Neighbours were attacked by the screams and they alerted the police. The accused was arrested and charged with this offence. A



postmortem was performed on the body of the deceased and the doctor formed the opinion that the cause of death was decapitation by a sharp object.

The Prosecution's Case:

5. PW1 Suleiman Mati Mukira aged ninety four years was initially charged with accused and turned a State witness. He testified that there was a time he had employed the accused to fetch leaves for his cows. The deceased used to take milk to him in the morning and pick the container later on the material day 17/1/2021 the accused went to his home at about 11.00 am and brought him sugar which he said was a token to say thank you as he had kept his motor bike for him at this home. The accused had left his motor bike at the home of PW1 on 12/12/2020. The PW1 told the accused to wait as he was saying prayers.
6. Later at 2.00 pm the deceased went to his home to pick the milk container which she had used to deliver milk to him earlier in the day. The accused held the deceased and she started screaming. He looked through the window and saw the accused cutting the deceased. He then held her and started sucking her blood. The deceased had been cut on the neck and was bleeding profusely. The accused was hold the child next to his chest and taking her that he would eat her heart that day. The accused then carried the body of the deceased to the goat pen and left her there. The accused then cut a goat which started making noise. The accused held a panga which he used to cut the child and the goat. He identified the panga which was produced in court as exhibit -1
7. PW1 ran away and reported at Magutuni Police Station. He went back to the scene and found many people. The accused had lit a fire and was saying that he wanted to eat the heart of the girl. Police arrested him
8. Purity Muriungi (PW2) was attending church service the Full Gospel Church Magutuni when at about 1.00pm she went behind the church where there are toilets intending to go for a short call. She then heard scream from a house which neighbours the church. The home belongs to Suleiman Mate. She then saw the child was on the ground and the accused who was armed with a panga was cutting her and cut the child's neck three (3) times. She saw he had severed the neck and picked the head. At that point she panicked and started screaming calling people who were in the church. The PW1 came out of his house and asked the accused what he had done. The accused was furious and said he wanted to eat the heart of a person. Members of the public who heard PW3 screaming went to the scene.
9. The PW1 went and reported to the police. When police came, the PW2 went to the compound and saw the body of the child and realized it was a child she knew by name Deborah Kendi. There was a goat and a chicken which had been cut. She also saw a panga which was used and she identified it in this court as exhibit -1.
10. Davidson Kirimi Joel (PW3) testified that on 17/1/2021 at about 2.00pm he was on the way to Magutuni when he met (PW1) near the Full Gospel Church and he informed him that there was a man to his home who had killed a child. PW1 requested him to take him to the police station so that he could report. He agreed and took him to Magutuni Police Station. He agreed. At the police station the police officer requested him to take him to the scene so that he could arrest the man before he escapes. PW3 took the policemen to the scene and on reaching the gate he saw a mob. He dropped the policemen then saw that a man had gone inside the house of Mati. The police ordered him to come out and asked him for the child whom he had killed. The man led the police to a goat pen where the headless body of the child was. The man then led the police to where he had covered the head of the child with soil and empty sacks. PW3 testified that he also saw the head of a goat, the head of a chicken and the headless carcass of a goat which was freshly cut as it was still bleeding. The man who



he identified as the accused in this case was arrested and hand cuffed by the police who save him from a mob who wanted to lynch him.

11. Catherine Wambui Mutege (PW4) is the mother of the deceased. She testified that on 17/1/2021 she gave the deceased some milk to take to Suleiman (PW1) as they used to supply him with milk every day. The child had to drop the milk on the way to the Sunday school at Full Gospel Church. The milk was in a half litre plastic container. The deceased would then pick the container on the way back from the church. Later the same day she was in a friend's house when some women went and told her that the child had been killed.
12. Doctor Nicholas Nkonge (PW5) is a medical doctor attached to Chuka Hospital. He testified that he performed the postmortem on the body of the deceased on 25/1/2021 and he filed a Postmortem Form. He testified that the body was pale and the head had a cut on the occipital region. The head was cut off from the body. There was a deep cut on that shoulder. The cause of death was decapitation of the head from the rest of the body. He produced the postmortem Form as exhibit-1.
13. No 57261 Police Corporal Isaya Wanyama (PW6) testified that on 17/1/2021 while attached to the office of the DCI at Maara Sub-County she accompanied the DCI at Maara Sub-County he accompanied the DCIO Madam Jacinta Mbaika to visit a scene of murder at Kiroo Sub-Location within Magutuni Location. At the scene they found officers from Magutuni Police Station and members of the public. They found that a child aged eight years had been murdered and the head was next to the goat shed while the body was inside the goat shed. There was a goat and chicken which had been slaughtered. The suspect had been arrested and was at Magutuni Police Station. The murder weapon was recovered and was produced as exhibit -2

Defence Case

14. The accused gave his defence on Oath and did not call any witness. He denied the charge. He alleged that the child was killed by PW1 as it happened at his home. He told the court that he never went to the home of Suleiman. He told the court that he was arrested the same day that the child was murdered.
15. The State filed written submissions. It is submitted that the issue for determination is whether it is the accused who unlawfully caused the death of the deceased. He submits that based on the evidence tendered by the six witnesses, they proved the charge against the accused beyond any reasonable doubts. That the defence of the accused a mere sham, untenable and which did not shake the strong prosecution's case. He urges the court to convict the accused.

Analysis and Determination:

16. The issue for determination is whether the accused is the one who cause the death of Deborah Kagendo Kinegeni with malice aforethought.
17. The accused is charged with murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). The Sections provides:-

“ 203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.

204. Any person convicted of murder shall be sentenced to death.”

Under these Sections the ingredients of the offence are:-

- i. Proof of the Fact of death



- ii. That the cause of death of the deceased was a result of the direct consequences of the accused's unlawful act or omission which is the actus reus of the offence
- iii. Proof that the unlawful act or omission was committed with malice aforethought the Mensrea.

See *Republic v Anthony Kyalo Ndaka & another* (2020) eKLR

Proof of death of the deceased:

18. The prosecution had the burden of proof that the deceased died. There is no dispute that the deceased died. The prosecution called Doctor Nkonge (PW5) who testified that he did a postmortem on the body of the deceased and formed the opinion that the cause of death was decapitation. There was also evidence adduced by the prosecution witnesses who went to the scene and saw the deceased without a head and the head was concealed by being buried in the soil then covered with socks. PW2 testified that she saw the body of the deceased and had witnessed as the deceased cut her using a big panga. PW6 also saw the dead body of the deceased and recovered the head.
19. I find that the prosecution proved that the deceased died.

Whether the death was caused by the unlawful acts of the accused.

20. To establish this issue the prosecution called two eye witnesses. The 1st accused was Suleiman Mati Mukira (PW1) the owner of the home where the offence was committed. He testified that the deceased used to take milk to him on her way to church and would pass by later to pick the container on her way home. On the material day the deceased dropped the milk and went to church. The accused later went to the compound and PW1 heard a child screaming. He then heard accused saying he would eat her liver. He went outside and found the deceased on the ground without a head and the accused was there holding a panga. He panicked and decided to go to the police. Purity Karimi Murui (PW2) witnessed the bizarre act and is an independent eye witness. She was attending service at Full Gospel Church and went for a call nature. While there she heard a child screaming and on checking, she realized that the sound was from the home of PW1. She then witnessed as the accused cut off the child's head using a panga. PW1 asked the accused what he had done. PW2 on the other hand went to call members of the public. The testimony of PW1 & PW2 was not shaken as the defence of the accused was that he was not at the scene. The PW1 & PW2 adduced directed evidence. It is trite law that the guilt of an accused person can be proved by the either direct or circumstantial evidence. In this case the prosecution has relied on direct evidence adduced by PW1 & 2. PW2 saw it all and gave an eye witness account. I find that the testimony of PW2 is direct evidence and is sufficient even on its own to establish the fact that it is the accused who unlawfully caused the death of the deceased by decapitating her using a panga. It is corroborated by the testimony of PW1. I find that the prosecution did discharge the burden to prove that it is the accused who caused the death of the deceased through the unlawful act of decapitating her.

Whether the deceased had malice aforethought:

21. Section 206 of the *Penal Code* defines malice aforethought. It provides as follows:-
 - “206. 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 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.”

22. The Court of Appeal in the case of [Joseph Kimani Njau v Republic](#) (2014) eKLR stated as follows:-

“Before an act can be murder, it must be aimed at someone and in addition, it is an act committed with one of the following intention, the test of which always subjective to the actual subject:

- i. The intention to cause death
- ii. Where the accused knows that there is a serious risk that death of grievous harm will ensue from his acts and commits those acts deliberately and without lawful excuse with the intention to expose a potential victim to that risk as a result of those acts.

It does not matter in such circumstances whether the accused desires those consequences to ensue or not, in none of these cases does it matter that the act and intention were aimed at potential victim other than the one succumbed.”

23. In this case the accused decapitated the body of the deceased as testified by Doctor Nkonge (PW5) who performed the postmortem malice aforethought may be implied, not only on the intentional Acts but also from reckless act like to cause death, the weapon used and the part of the body injured to cause the death of grievous harm whether followed with independence of the consequences of such an act. The injury inflicted shows beyond doubts that the intention was to cause death. PW1 stated that he heard the accused say that he wanted to eat the deceased’s liver that day. The intention of the accused was to cause death of the deceased. I find that the prosecution has established that the accused cause the death of the deceased with malice aforethought.

24. The defence of the accused was a mere denial. I reject it in the light of overwhelming evidence adduced to prove the charge. The question that ringer is whether the accused was in his proper mental capacity to be criminally liable for this offence. This is based on the medical report which was tendered in court before the accused was charged in court.

25. A mental status assessment for Michael Ngugi Riungu aged 34 years was filed in this court on 20/1/2021. According to the clinical Psychiatrist, Erick Bundi Chuka District Hospital, the accused suffers a mental illness. Most probably schizophrenia with a co-morbid of drug induced psychosis. The recommendations were that he is fit to stand trial. Secondly he requires treatment for schizophrenia/DIP. The procedure in cases of mental illness is laid down under Section 167 (1) (a) (b) and (c) of the [Criminal Procedure Code](#) which provides as follows:-

“ 167.



- (1) If the accused, though not insane, cannot be made to understand the proceedings -
 - (a) in cases tried by a subordinate court, the court shall proceed to hear the evidence, and, if at the close of the evidence for the prosecution, and, if the defence has been called upon, of any evidence for the defence, the court is of the opinion that the evidence which it has heard would not justify a conviction, it shall acquit and discharge the accused, but if the court is of the opinion that the evidence which it has heard would justify a conviction it shall order the accused to be detained during the President's pleasure; but every such order shall be subject to confirmation by the High Court;
 - (b) in cases tried by the High Court, the Court shall try the case and at the close thereof shall either acquit the accused person or, if satisfied that the evidence would justify a conviction, shall order that the accused person be detained during the President's pleasure."

Section 11 of the [Penal Code](#) on the other hand provides as follows:-

" 11. 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."

26. The accused was found fit to stand trial but he required treatment for a mental disorder or illness which was manifest at the time of examination his perception had Persecutory and Paranoid Delusions, auditory and visual, Hallucinations. The doctor noted that there was a history of mental illness in the family. Section 12 of the [Penal Code](#) provides as follows:-

" 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."

27. There are two limbs under the section which are:-

1. Person doing the act or committing the omission does not know what he is doing due to mental illness.
2. The person doing the act or committing the omission does not know that he ought not to do the act or commit the omission due to mental illness.

28. The section is in essence stating that the person may commit the act and at the time of doing so he may not have known that he ought not to have committed the act. Thus if a person commits an offence



which due to his mental illness was ignorant of the legal position that the act was unlawful, he is protected under the law. It is clear that at the time of the mental assessment report the accused was suffering from a mental illness which required treatment. Section 25(2) of the Penal Code provides that:

29. 25(2) Sentence of death shall not be pronounced on or recorded against any person convicted of an offence if it appears to the court that at the time when the offence was committed he was under the age of eighteen years, but in lieu thereof the court shall sentence such person to be detained during the President's pleasure, and if so sentenced he shall be liable to be detained in such place and under such conditions as the President may direct, and whilst so detained shall be deemed to be in legal custody.”
30. This section has been considered in the case of A.O.O & 6 others v Attorney General & another (2017) eKLR, Justice Mativo as he then was stated that:-

“It must I think be conceded that if the release of the prisoner depends entirely on the capricious exercise of discretion of the prison or executive authorities leaving them to free to consider such a possibility at a time which they please or not at all and to decide what they please when they do, the hope that might yet flicker in the mind and heart of the prisoner is much too faint and much too unpredictable to retain for the prisoner a sufficient residue of dignity which is left uninvaded.”

31. The circumstances under which the offence was committed show that the accused was laboring under a mental illness. He is guilty of the offence of murder but was insane. The law requires that such an accused person shall be detained in a mental hospital or any other suitable place at the President's pleasure. The problem is that such an incarceration fails to address the dignity of an accused which is guaranteed under Article 28 of the Constitution. The Court of Appeal in the case of D.M.v. Republic (2016) eKLR states the Court of Appeal set aside a sentence of 40 years imprisonment and ordered the accused to be detained at Port Reitz Hospital to continue treatment. The accused in this case was mentally sick at the time he committed the offence. He is found guilty but insane. He shall be committed to a mental hospital to undergo treatment as required under Section 162 (5) of the Criminal Procedure Code until such time that the President makes any other order or until the court orders him to be brought to court. The Deputy Registrar shall transmit to the Cabinet Secretary responsible for the Kenya Prison Service a copy of these proceedings and Judgment. The accused shall be committed to Mathari Mental Hospital to undergo treatment.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 9TH DAY OF JULY 2024.

L.W. GITARI

JUDGE

9/7/2024

The Judgment has been read out in open court.

L.W. GITARI

JUDGE

9/7/2024

