



**Republic v Mweka (Criminal Case 46 of 2020)  
[2024] KEHC 9934 (KLR) (5 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9934 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL CASE 46 OF 2020**

**PJO OTIENO, J**

**JULY 5, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**ULSIER MWEKA ..... ACCUSED**

**JUDGMENT**

1. Ulsier Mweka was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence were given to be that on the 12.11.2020, at Shimanyiro area in Kakamega Central Sub County, she murdered Anriet Isiaho.
2. She pleaded not guilty to the information thus inviting the prosecution to prove its case by calling four witnesses towards the discharge of its onus.
3. The first to take the stand was Eunice Kenyatta, PW1, who testified that on the 9.11.2020, at about 4 p.m., she was on her way to Shimanyiro Market and was joined on the way by Enrieta Isiaho (the deceased). The two conversed and the witness was requested by the deceased, that she goes to the deceased place of work on the 12.11.2020 and help her with some farm work.
4. On the set date, the witness went to the home of the deceased in the company of her friend called Ruth. The two were shown the part of the farm from where they were to harvest groundnuts. While the two continued with the assigned work, the Accused also went to the farm and started harvesting on the other part.
5. The deceased, then asked the Accused to stop working but the Accused continued and suddenly attacked the deceased with the jembe she had been using for the work. The deceased was hit on the head and fell down.



6. The witness and her friend went to assist the deceased while the Accused escaped into the sugar plantation. The deceased was assisted to reach the hospital at Shimanyiro for treatment but was referred to Shiseso where treatment was given. The witness then left the hospital for home after an aunt to the deceased joined them and took charge. The witness was meeting the Accused for the first time but added that they had been at the farm from 8 a.m. to 11 a.m. when the incident took place. She identified the jembe which was then marked “PMFI.1”.
7. On being cross-examined, the witness told the defence Counsel and the court that it was the deceased who spoke to the Accused without a response. On being questioned by the court, the witness said that the Accused did not talk nor greet them when she came to the farm and that even when asked by the deceased to talk, she did not reply at all. The witness came to learn later that the Accused and the deceased lived in one homestead but she did not know the relationship between the two.
8. PW2 was Mr. Ayub Yapesa Vitienyi. His testimony was that being a teacher, on the 12.11.2020 he was at school when he received a telephone call from his father, one Alphonse Vitienyi, to the effect that the deceased had been injured. He decided to visit the scene and found that the deceased had been taken to hospital. He followed to Shiseso Health Centre where the deceased could only get first aid and was later transferred to Kakamega General Hospital where she was admitted till the 20<sup>th</sup> November, 2020 when she passed on.
9. The next day the witness went to the home where the incident had occurred and spoke to one Daudi, a co-worker to the deceased. Daudi told him that even him he was surprised to have seen PW1 and another rush to the place where the deceased was lying on the ground. He confirmed having visited the home before the incident and had met the Accused there and learnt that the Accused was a daughter-in-law to the owner of the homestead. On the date the deceased died, the witness visited the home in the company of the police and found the Accused at the shamba.
10. On being cross-examined by Ms. Masakhwe, he denied having witnessed the incident. He said that when he met the deceased at Shiseso Health Centre, she was with PW1 and the deceased was able to speak but incoherently. He denied knowledge of the whereabouts of the Accused between 12<sup>th</sup> to 20<sup>th</sup> November but could remember seeing her at the farm on 20.11.2020.
11. On being re-examined by the prosecution the witness told the court that when they met the Accused on 20.11.2020, she was indifferent; never spoke to them save for asking them if they would buy her meat if she accompanied them to the police car.
12. Dr. Dixon Mchana gave evidence as PW3. He had with him an autopsy report relating to the body of the Anriet Isiaho. The witness conducted the autopsy on the 24.11.2020 at the Kakamega General Hospital mortuary after the body was identified to him by PW2 and Charles Fento.
13. On external examination, he observed the tongue, nails and lips to be bluish in colour. It had a stitched wound on the forehead to the left below the hair line. There were also defence injuries on the left forearm but the body had no signs of chronic ill health even though there was clear evidence of medical intervention.
14. Internally, there was depressed skull fracture below the skin evidencing pressure on the brain but without bleeding into the brain which was moderately swollen. He formed the opinion and conclusion that the death was due to severe injury to the head secondary to sharp force trauma following assault. He produced the report as an exhibit and was thus marked “P.Exh.1”. Upon cross-examination by the defense counsel, he confirmed that no witness represented the Accused at the post mortem examination.



16. The last witness was No. 92813 PC Chepkoech Emily who testified that on 20.11.2020, she was on standby duties at the station when she received information from the OCS, Kakamega Central, directing that she and her colleague visit Shimanyiro where an incident of murder had been reported. The witness in the company of a colleague, PC Adie, and a police driver proceeded to the scene and met PW2 already there.
17. There was also PW1, the eye witness, who narrated to them how the incident occurred. That reported narration was a recap of the testimony of PW1. As PW1 narrated the happenings, the suspect was in her house where she lived alone. She was thereafter arrested and subsequently charged. The witness later attended a post mortem examination at which the Pathologist determined that the deceased died due to severe injury to the head. He equally recovered the murder weapon, the jembe, which he produced as P.EXH.2, without any protestation from the prosecution.
18. The witness then added that when taken for mental assessment the Accused was initially determined to be unfit to plead due to depressive disorder but a subsequent assessment found her fit to having been taken for review at Mathari National Teaching and Referral Hospital.
19. He concluded his testimony by stating that his investigations did not reveal any grudge between the Accused and the deceased but added that the attacker was provoked by denial of the Accused of an opportunity to be part of those harvesting the groundnuts.
20. On being cross-examined by the defence Counsel he told the court that other than being told how the Accused assaulted the deceased, she was also told by PW1 that the Accused was mentally challenged. To him only the Accused, deceased and PW1 were present at the scene during the incident, that the Accused was arrested from her house and that the recovered jembe was not taken for analysis due to lapse of time between the date of assault and the date of arrest.
21. The end of the testimony by PW4 marked the end of the prosecution's case. Having reviewed the evidence on record, the court determined that a prima facie case had been established and she was placed on her defence.
22. The Accused elected to give sworn statement and told the court that she indeed hit somebody called Catherine Musamia who was taken to hospital, treated and had fully recovered. She denied knowledge of the person named Eunice Kenyatta.
23. On re-examination, she admitted knowing one Enrieta who would live with her mother-in-law for purposes of giving care. The short evidence marked the close of the defence case.
24. Even though the parties were given two chances to file and exchange Submissions, none is on record as I prepare this decision. That by itself does not impede the Court from executing its mandate.
25. Having proffered a charge of murder against the Accused, the prosecution acquired for itself the onus to prove beyond reasonable doubt, that; the deceased is indeed dead; that the death was caused by the unlawful acts of omission or commission of the Accused and that in doing so she, the accused, was propelled by malice aforethought.
26. Whether or not the person named as deceased is dead was confirmed by the evidence by all the witnesses for the prosecution with the added expert evidence by Dr. Dixon Mchana. The court thus has no reason to doubt the autopsy report and entertains no reasonable doubt that Enrieta Isiaho is dead.
27. On who inflicted the injury shown to have led to the death of the deceased, the evidence by PW1, even though not corroborated by another eye witness, was cogent and remained unshaken throughout. The witness knew the accused and saw her inflict the jembe blow. The accused on her part admits having



hit a person she gives a name different from that of the deceased. There is no evidence that there was another person on the part of the shamba the altercation took place. Pw1 did not see any other person save for the accused and the deceased.

28. The court finds that there was no possibility of a mistake on PW1 on the identity and actions of the Accused. In addition, the Accused in her defence admitted having hit one called Catherine Musamia who was taken to hospital but recovered. The court understands the Accused to have denied hitting the deceased. His evidence of denial did not displace that by PW1. Instead the evidence by the Accused situated her at the scene of the crime. The court finds that it is the Accused who administered the fatal blow using P.EXH.2 . In attacking the deceased on the head using a jembe, the Accused must have intended to, at the very least, inflict grievous harm upon the deceased. By dint of Section 206 of the Penal Code she is deemed to have been possessed of malice aforethought. In lifting and unleashing the jembe on the head of the deceased, no other expectation could be deemed of the Accused other than that a grievous harm would result.
29. Based on the evidence on record, the court finds that all the ingredients of the offence of murder have been established against the Accused beyond reasonable doubt. She is therefore determined guilty and is thus convicted for the offence of murder as charged.
30. This matter is now stood over to the 29<sup>th</sup> July, 2024 for mitigation and sentencing. Let the Probation Office compile and file a Pre-sentence report within fourteen (14) days from today.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5<sup>TH</sup> DAY OF JULY, 2024.**

**PATRICK J. O. OTIENO**

**JUDGE**

In the presence of:

Ms. Chala for the Prosecution

No appearance for Ms. Masakhwe for the Accused

Accused present

Court Assistant: Polycarp

