



REPUBLIC OF KENYA



**Republic v Gachobe (Criminal Case 30 of 2018)
[2023] KEHC 1247 (KLR) (16 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1247 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE 30 OF 2018
AN ONGERI, J
FEBRUARY 16, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOHN GACHIRI GACHOBE RESPONDENT

JUDGMENT

1. The Accused Person in this case, John Gachiri Gachobe is charged with Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. The particulars of the charge are that on 22/10/2018 at Jubert in Londiani, Londiani Sub-County within Kericho County, the Accused Person murdered Pauline Mwihaki.
3. The Accused Person pleaded not guilty. The Prosecution called a total of 8 witnesses whose evidence in summary was as follows.
4. PW.1, Francis Kamau Mwangi who stays at Londiani and works as a herdsman said on 24/10/2018 while at Jubert Forest looking after cattle when Vincent called him and told him he found someone in the forest who was dead.
5. PW.1 went to the place he was called to and he saw the body of a woman covered with grass. He reported the issue to the Chief.
6. PW.1 said the Chief came and picked the body. He did not know whose body it was.
7. PW.2 – Mary Atieno said she was a neighbor to the Accused Person at Londiani. She in October, 2018 on a date she could not recall, she left the Accused Person at home with his wife and went to work.
8. PW.2 said in the evening, the Accused Person returned to the house alone. She did not see the wife and the following day, she asked him where the wife had gone. He told her she had gone home. She asked



- him where they had gone the previous day and he said they had left for short while. PW.2 said that evening, Police went and arrested him.
9. PW.3 Lucy Wangare Gachiri said she lives at Kahurura Village in Londiani where she does the business of selling soup and Meat.
 10. PW.3 said the Accused Person was brought to her by an old man called Kamau who told her the Accused Person was looking for a house. PW.3 gave them a house. She said the Accused Person was with his wife. She did not know the name of the wife.
 11. PW.3 said her son Amos told her a few days later that the wife of the Accused Person had been found dead at the Forest and that the Accused Person had been arrested. PW.3 went and locked the house with a padlock. She said Police came with the Accused Person and took some clothes and a panga from the house.
 12. PW.4, Paul Rono who is the Senior Chief at Londiani Location said on 23/4/2018 at his office, he was called by one Geoffrey Mbuthia who told him a body of a woman had been found in the forest.
 13. PW.4 called Police and they went and collected the body. They found the body in the forest covered with grass.
 14. PW.4 said he did not know whose body it was. He inquired whose body it was and he was told it was someone new at Londiani.
 15. The body was taken to the mortuary and Police arrested the Accused Person who was also new at Londiani.
 16. PW.5 – Kipngetich Bernard who is a Government analyst based at Government Chemist, Nairobi said on 25/1/2019, he received the following items from Corp. Silas Tanki.
 - i. A blood stained piece of wool marked “A” (for Pauline Mwhaki (Deceased))
 - ii. A Panga marked 1.
 - iii. A Piece of Wood marked “C”.
 - iv. A purple shirt marked “B”. (For John Gachiri – Accused Person).
 - v. A blue pair of Jeans marked “E” (for John Gachiri – Accused Person.)
 17. PW.5 was required to examine the items and determine the presence and origin of any biological materials.
 18. PW.5 said that the piece of wood, the purple shirt and jeans trouser were moderately stained with human blood.
 19. PW.5 also said the panga was nearly stained with blood of human origin.
 20. He said the blood stains were analyzed and DNA profile produced showed that the DNA profile from the panga, piece of wood and purple shirt and jeans pair of trouser matched the DNA profile generated from the blood stained cotton wool which was indicated as belonging to the deceased Pauline Mwhaki.
 21. PW.6 – P.C. Oyugi said 23/8/2018, he received a call from the OCS Londiani CIP Ngao who said a dead body had been found at Mutarakwa Jubert Forest.
 22. PW.6 went with the Area Senior Chief called Rono and they found the body of a woman covered with grass.



23. PW.6 said he received information that the Accused Person who was the husband of the deceased had been seen. He arrested the Accused Person at a rented house and recovered the panga, blue jeans, purple shirt.
24. PW.7 – Dr. Rodgers Namisi Wangalia a Medical Professional attached at Molo General Hospital produced the Post Mortem Report on behalf of Dr. Nthenya Mbithi dated 31/10/2018. PW.7 said he worked with Dr. Nthenya before she proceeded for further studies and he was conversant with her signature.
25. PW.7 said the cause of death was exsanguination secondary to severed jugular vein (left) and carotid artery.
26. PW.8 is the investigating officer who carried out investigations and charged the Accused Person with this offence.
27. The parties filed submissions which I have duly considered.
28. The Court found that the prosecution had established a *prima facie* case to warrant the Accused Person to be placed on his defence.
29. The Accused Person in his defence said on 22/10/2018, he was at his house at Londiani Kahurura at 5 pm when Police Officers went and arrested him.
30. He was told the body of a woman he had been seen with had been found at Jubert Forest.
31. He said he was taken to the Place the body was found. He said police went and took some clothes from his house.
32. The Accused Person said the deceased was his girlfriend. They did not have children and they had stayed together for two weeks.
33. In cross-examination, the Accused Person denied that he went with the deceased to the forest. He said the panga and clothes were taken from his house.
34. I have considered the evidence adduced by the prosecution in this case. It is the duty of the prosecution to prove the guilt of the Accused Person and the standard of proof required in criminal cases is beyond reasonable doubt.
35. There are three elements the prosecution must prove in a charge of murder, these are contained in section 203 of the *Penal Code* CAP 63 which provides as follows; “Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
36. Therefore, in order for the prosecution to secure a conviction on the charge of murder, the prosecution is required to prove beyond reasonable doubt that the accused by an unlawful act or omission caused the death of the deceased through malice aforethought.
37. In *Anthony Ndegwa Ngari v Republic* [2014] eKLR, the elements of the offence of murder were listed as follows;

“(a) the death of the deceased occurred; (b) that the accused committed the unlawful act which caused the death of the deceased; and (c) that the accused had malice aforethought.”
38. I find that the death of the Accused has been proved.



39. The evidence against the Accused Person is circumstantial. For circumstantial evidence to be relied on, it must meet the following criteria. In *R v Kipkerring Arap Koske & 2 Others* [1949] 16 EACA 135, the court observed as follows; “In order to justify a conviction on circumstantial evidence 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 and 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 always on the prosecution and never shifts to the accused.”
40. In the case of *Simon Musoke v R* [1958] EA 715 the court observed as follows; “In a case depending exclusively upon circumstantial evidence, he (the Judge) must find before deciding upon conviction that the inculpatory facts were incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt. The circumstances must be such as to produce moral certainty, to the exclusion of every reasonable doubt.”
41. In *Abamad Abolfathi Mohammed and Another v Republic* [2018] eKLR, the Court of Appeal stated as follows on circumstantial evidence; “However, it is a truism that the guilt of an Accused person can be proved by either direct or circumstantial evidence. Circumstantial evidence is evidence which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence can form a strong basis for proving the guilt of an Accused person just as direct evidence.”
42. The prosecution has proved that the Accused Person’s clothes were stained with blood whose DNA profile matched with that of the deceased.
43. The way the injury was inflicted shows the Accused Person had malice aforethought. The Jugular vein was severed. This shows that the Accused Person had the intention to kill the deceased.
44. Malice aforethought is defined in section 206 of the [Penal Code](#), CAP 63 in the following terms;
- (a). An intention to cause death or to do grievous harm to any person whether such person is the person actually killed or not.
 - (b). Knowledge that the act or omission causing death will cause the death of or grievous harm to some person, whether such person is the person 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 be caused.
 - (c). An intent to commit a felony.
 - (d). An intention to facilitate the escape from custody of a person who has committed a felony.
45. For the offence of murder and proof of malice aforethought in *Rex v Tubere s/o Ochen* [1945] 1Z EACA 63, Eastern Court of Appeal observed as follows;
- “In determining existence or nonexistence of malice one has to look at the facts proving the weapon used, the manner in which it is used and part of the body injured.”
46. I find that the defence by the Accused Person is a mere denial.
47. I find that the prosecution has proved the guilt of the Accused Person to the required standard.
48. I convict the Accused Person with the offence of Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#).



DELIVERED, DATED AND SIGNED AT KERICHO THIS 16TH DAY OF FEBRUARY 2023.

A. N. ONGERI

JUDGE

