



**Republic v Murage (Criminal Case 12 of 2020)  
[2023] KEHC 908 (KLR) (15 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 908 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
CRIMINAL CASE 12 OF 2020  
LM NJUGUNA, J  
FEBRUARY 15, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**NAOMI WANJIKU MURAGE ..... ACCUSED**

**JUDGMENT**

1. The accused person herein is facing two counts of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the 1<sup>st</sup> count are that on the night of 9<sup>th</sup> /10<sup>th</sup> April, 2020 at Kirimaini village, Mukure Location in Kirinyaga West Sub County within Kirinyaga County murdered Charles Murimi Ngige. The particulars of the 2<sup>nd</sup> count are that on the night of 9<sup>th</sup> /10<sup>th</sup> April, 2020 at Kirimaini village, Mukure Location in Kirinyaga West Sub County within Kirinyaga County murdered Valarie Njeri Murimi.
2. Upon arraignment, he pleaded not guilty and a plea of not guilty was entered for both counts. The case proceeded for trial and wherein the prosecution called a total of eight (08) witnesses who testified in support of its case.
3. PW1, Paul Mwangi Ngigi testified that on April 10, 2020 at around 1.00 am, PW3 went to his house crying. That he called PW1's son, Alex Karani and informed him that his sister Valarie had been killed and given that he was not in good relation with Charles Murimi Ngige (deceased), he sent PW3 to call PW2. It was his evidence that they went to the scene and found the bodies of the deceased persons herein which had various injuries in that Charles Murimi Ngige (deceased) had a slit throat; while Valarie Njeri had a cut on her neck.
4. PW2, Jane Njeri Njine stated that on April 10, 2020, he was called by her son, PW1 who told her to go to his place as a matter of urgency. That upon arrival at the scene, she found PW3 crying. They went to the deceased house and found the bodies of Charles Murimi Ngige (deceased) and Valarie Njeri lying



on different beds. It was her evidence that the assistant chief who also visited the scene also confirmed that the duo were dead. The accused was arrested and she admitted to having killed the duo. According to her, the accused had no mental or physical illness.

5. PW3, Felix Njine Murimi testified that on the material day, he was asleep in his house and at around 3.40 am, he went outside the house and found the accused herein with a rug and that she asked him to give her a blanket so that she could sleep in his house as she had been chased away by her husband the father to PW3. That he went back to his house and peeped through the window and saw some light and after some time, the accused came out with an axe. That the accused went round the tank severally and since she was carrying an axe, he wanted to know the reason why. That he could see the accused person clearly as there was moonlight. He stated that the accused got into his house and sat on the table room and said that she had murdered them and before he could run away, he managed to grab the axe from the accused and went to a neighbour's shamba where he hid for six hours. Upon return to the compound, he found the bodies of the deceased persons' in their respective bedrooms. He stated that his dad had injuries on the left side of his head while Valarie had no injuries. That sometime in December 2019, his dad informed him that the accused was undergoing treatment for mental illness; that she had started isolating herself by sleeping in a separate bedroom. He went to PW1 and told him what had happened at home that day.
6. PW4, Jacinta Wangu Murage stated that on April 15, 2020, she identified the bodies of the deceased persons herein to the doctor who carried out post-mortem. It was her evidence that the accused who is her sister and her husband – Charles Murimi (deceased) - had issues with their marriage which were brought about by the fact that Charles Murimi Ngige (deceased) had mistresses which issue had caused the accused person to suffer from depression for which she had been treated and was on medication.
7. PW5, Ruth Wangari Kahiu stated that she is a governmental analyst and that on April 20, 2020, she received some exhibits and memo form from the investigating officer. That after carrying out analysis, she reached a finding that the DNA profile generated from the swab item 4 A 1 (a), CM 4 A 2 (a) and the pillow CM 1 (I) matched the DNA profile generated from the blood sample marked CM3 (1) and CM 3 (II) Charles Murimi, the deceased with a probability of a random match of one in  $5 \times 10$  raised to the power of 22 being very accurate. That the match was that of Charles Murimi. The DNA profile generated from the item VN 3 (I) matched the DNA profile generated from blood sample marked VN 3 (II) and VN3 (III). That the probability of a random match of 3.3 raised to the power of 18. Further, that the DNA generated from the axe matched the DNA profile generated from blood marked VN3 (I) and VN 3 (II) with a probability of random match of one in  $3.3 \times 10$  raised to the power 18. That the third DNA generated from the night dress, NWM 8 matched the DNA profile generated from the blood sample marked NWM 9 A and NWM B – Naomi Wanjiku Murage with a probability match of one in  $2.0 \times 10$  raised to the power of 20.
8. PW6, No 60xx PC Kithae Mutunga testified that on April 10, 2020 at around 1600 hours, he was requested to photograph a scene of murder involving one Charles Murimi (deceased) and Valarie Njeri Murimi(deceased). That following the request, he took photographs, prepared a certificate dated July 27, 2022. He further produced the photographs as exhibits.
9. PW7, No 62xxx Sgt Biffent Otieno testified that on April 10, 2020, he was instructed along other officers to visit Gitiku village in Kirimaini area which was a scene of murder. That on arrival, they found PW3 who opened the house for them and took them through the rear door and to the bedroom of his late sister, Valarie Njeri where they found her body; and to the bedroom of the accused person where they found the body of the husband of the accused. That PW3 narrated to them that while he was sleeping in his house next to his parent's house, the accused came, knocked on his door and when he opened, she told him that she had been chased away by the deceased (her husband). That PW3 gave



- the accused a blanket and told her to sleep on a sofa in his house while he also went to sleep. He stated that PW3 felt like going for a short call and he opened the door to go to the toilet. He saw the accused herein with an axe and that a struggle ensued between them and on overpowering her, he ran away. It was his statement that PW3 stayed away from the homestead and came back at 12.20 pm only to find the deceased persons herein had been killed. That he raised alarm and alerted PW1 who also informed the police for assistance. That they took the bodies, beddings, two bed pillows from the main room and others from Valarie's room for further investigations.
10. Further that on April 11, 2020, the accused was arrested by members of the public and thereafter, they re-arrested her and took her to the police station. That he recorded the statements from the accused and other witnesses and made an exhibit memo form which together with the exhibits he sent to the government chemist for analysis. He stated that he was not present when the accused person was arrested but he saw her the following day after she was arrested and that she appeared disturbed and incoherent.
  11. PW 8, Dr Mwikamba Andrea testified that on May 12, 2020, she examined the accused herein at Meru Teaching and Referral Hospital. That the accused wasn't sure of her age, stated that she worked with the Judiciary, she understood the charges she was facing but denied that she was involved in the murder. He testified that the accused was being followed up for a mental disorder by a psychiatrist in Nyeri but he wasn't sure of the medication that the accused had been using. That her sleep and feeding patterns were normal. On physical examination, she was in good state; her appearance and behaviour had psycho mortal retardation and it was difficult to create a good rapport with her. It was his evidence that the accused did not have any insight about her condition and in conclusion, formed the opinion that the accused had a mental disorder called Major Depressive Disorder and thus she was unfit to stand trial. He stated that he started her on treatment and recommended an admission to a mental institution; he produced the report as Pex 19 (1). It was his case that the condition that the accused herein had been suffering from was treatable with anti-depressants'.
  12. Further, that he saw her again on January 12, 2021 at Meru Teaching and Referral Hospital. That on this second examination, the accused inter alia understood the charges she was facing, recognised that the deceased persons herein were husband and daughter, and that she had been on treatment for mental disorder since 2020. He stated that the accused was attending clinic at Embu Teaching and Referral Hospital and that she was on three different types of medication. That, the appearance and behaviour were good; she was easy to create rapport with; her thought process was organized and goal oriented. In conclusion, he stated that the accused had suffered a mental disorder called depression and given that she had been on treatment, she was now fit to stand trial.
  13. After the close of the prosecution's case, the accused herein was placed on her defence upon the court finding that the prosecution had established a prima facie case.
  14. Naomi Wanjiru Murage, the accused herein, testified that she suffered a mental illness (depression) in the year 2019. That she was put on treatment at Mathari and Outspan Hospitals. That after leaving Outspan, she stayed at home with her family for some time but all the while, she was under medication. She stated that she could not remember what happened on the material night as she was still under treatment but noted that from the time that she was discharged from Outspan Hospital to the time of the incident, it was a period of one month. It was her evidence that she was diagnosed with bipolar. She produced treatment notes from Outspan Hospital as an exhibit. She stated that when sick, she could lose sleep for even a whole month and that on April 10, 2020, she was told that she had killed the deceased persons herein. She stated that she could not remember when she was arrested for the murder of her husband and daughter but said that she was sad to learn that her daughter had died.



15. DW1, Nelson Miano Mwangi a practicing physiotherapist testified that he became aware that the accused person suffers from a mental illness after she called him sometime in June 2019 informing him that she had a lot of stress and she requested him to meet her. That he met her in his office when the accused informed him that she had not slept for four days. It was his statement that he advised her to see a doctor following which, the accused person visited Mathari Hospital and was put on medication and she was assigned to him to be her counsellor as he was working in the said hospital. He later learnt that the accused was admitted at Outspan hospital.
16. After the close of the defence case, parties filed written submissions.
17. The prosecution submitted that its witnesses did not specifically spot the accused herein cause the injuries on the deceased persons but, that alone, did not weaken its case as the same could still be proved by way of circumstantial evidence. Reliance was placed on the case of [\*Republic Vs Richard Itweka Wabiti \[2020\] eKLR\*](#) which noted that circumstantial evidence when examined together, gives an accurate proposition of a fact. That the accused person placed herself at the scene of crime where the deceased persons suffered their injuries and where their bodies were discovered by the investigating officer and other witnesses. Further, the accused had left for the house of his son PW3 while armed with an axe ready to injure him too. That all the threads of evidence in this case if weaved together link the accused to the death of the deceased persons herein. In regards to the defence of insanity as raised by the accused to contest mens rea; it was submitted that the said defence is not available given that the crucial moments when the accused's mental condition becomes relevant for the purpose of the defence of insanity is the very moment when the murder was committed. Reliance to support this proposition was placed on the case of [\*Leonard Mwangemi Munyasia Vs Republic \[2015\] eKLR\*](#).
18. It was submitted that though the accused in her testimony stated that she was diagnosed with bipolar disorder in 2019 and had experienced mental health issues, she had received therapy, returned home and was continuing with her career which position was affirmed by DW 1. Further, the medical report produced by the accused person was in relation to treatment received in 2019. That the mental assessment reports produced in evidence were conducted on May 12, 2020 and January 12, 2021 respectively. That there is no evidence tendered by the accused person to support the defence of insanity at the time of the commission of the offence herein. That the deliberate manner in which the offences were perpetrated, the brutality of the injuries caused to both the deceased persons all point to the perpetrator's intention to kill the deceased persons. In the end, this court was urged to find that the evidence on record is sufficient to convict the accused person of the offence of murder.
19. The defence submitted that the aspect of death and the accused having been responsible for the said deaths were not disputed and thus the only issue for determination is whether the accused herein had malice aforethought. Reliance was placed on sections 12 and 166 of the Penal Code and [\*Criminal Procedure Code\*](#) respectively. That the medical history of the accused person and the evidence produced before the court undoubtedly proved that the accused was mentally ill at the time of the commission of the offence that led to the death of the deceased persons herein. Further reliance was placed on the case of *Republic Vs IKI and Wakesho Vs Republic (2021)* where the court faced with similar facts in issue found that the accused was insane during the commission of the acts that led to the death of the deceased.
20. I have considered the evidence presented before this court by both the prosecution and the defence. It is trite that in any charge preferred against an accused person, the prosecution has the duty to prove the elements of the same. (See Section 107 of the [\*Evidence Act\*](#) Cap 80 of the Laws of Kenya. The degree/standard of prove is always that of 'beyond any reasonable doubt' [See was *Miller Vs Minister of Pensions [1947] 2 ALL ER 372 – 373*].



21. In the instant case, the accused person is facing a charge of murder contrary to Section 203 as read with Section 204 of the Penal Code. Murder is defined as 'when any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.' The elements of murder and which the prosecution ought to prove are;
- a. the death of the deceased occurred
  - b. the death was caused by unlawful acts;
  - c. that the accused committed the unlawful act which caused the death of the deceased; and
  - d. that the accused had malice aforethought.

(See *Anthony Ndegwa Ngari Vs Republic [2014] eKLR*).

22. The question therefore is whether the prosecution tendered sufficient evidence to prove the above elements.
23. As to whether the death of the deceased occurred, it is not in doubt that the deceased persons herein died. PW7 produced the post mortem report that was done by Dr PM Ndegwa and in his opinion, the cause of death of Charles Murimi was neck injury due to sharp force trauma plus cramo cerebral injuries due to blunt force trauma. In reference to Valarie Njeri, the same doctor opined that the cause of death was severe cranocerebral injuries due to blunt force trauma; as such deaths was proven.
24. As to whether the deaths were caused by unlawful acts, under Article 26 of the *Constitution* of Kenya 2010, right to life is protected and can only be taken away under the circumstances provided therein. What this means is that every homicide is unlawful unless authorized by law or excusable under the law or under justifiable circumstances such as self-defence or defence to property. (See *Guzambizi Wesonga Vs Republic [1948] 15 EACA 63*). PW 7 gave evidence that the death of the deceased was as a result of blunt trauma to the head. As such the death of the deceased persons herein were definitely caused by acts which are not excusable or authorized by law and thus the same was unlawful.
25. As to whether the accused person committed the unlawful act which caused the death of the deceased persons, the same has not been denied by the defence and the only issue raised is whether the accused herein had malice aforethought and particularly whether the accused was sane during the commission of the offence.
26. The accused person mounted a defence from the onset to the effect that she was suffering from a mental illness. In her written submissions, it was submitted that the prosecution did not prove the mens rea for the reasons that the medical history and the evidence produced by PW3, PW7 and PW8 undoubtedly prove that the accused was mentally ill at the time of the commission of the offence that led to the death of the deceased persons herein.
27. Section 11 of the Penal Code (cap 63 Laws of Kenya) provides that: –
- ' Every person is presumed to be of sound mind and to have been of sound mind at any time which comes into question until the contrary is proved.'
28. Under Section 12 it is provided: -
- ' 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 maybe 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 effect above mentioned in reference to that Act or omission.'

29. It is thus clear that insanity is a defence if it is proved that at the time the accused committed the offence she was labouring under the disease of the mind. However, for the said defence to be available, it must be shown that the accused at the time of doing the act or making the omission was incapable of understanding what she was doing or of knowing that she ought not to do the act or make the omission as a result of the disease of the mind.

30. The Court of Appeal in the case of Leonard Mwangemi Munyasia Vs Republic (2015) eKLR held that; -

' if it is shown that the appellant suffered from this condition then under Section 9 & 12 of the Penal Code he could not be held criminally responsible for the murder of the deceased.

Both Section 12 aforesaid and the M/c Naughten Rules recognise that insanity will only be a defence if it is proved that at the time of the commission of the offence charged, the accused person by reason of unsoundness of mind, was either incapable of knowing the nature of the act he is charged with or was incapable of knowing that it was wrong or contrary to the law. The test is strictly on the time when the offence was committed and no other.'

31. Further, from the provision of Section 11 the presumption of insanity is rebuttable. Where an accused person raises the defence of insanity the burden of proving insanity rests with him on a balance of probability (See *MARII Vs Republic [1985] KLR 710* and *Muswi s/o Musele v Republic [1956] EAC 622*).

32. In the case herein, the prosecution submitted that the defence of insanity that was raised to contest mens rea is not available for the accused given that the crucial moments when the accused's mental condition become relevant for the purpose of the defence of insanity is when the murder was committed; while the defence contested that the medical history of the accused person and the evidence produced before the court undoubtedly proved that the accused was mentally ill at the time of the commission of the offence that led to the death of the deceased persons herein.

33. From the evidence on record, PW3, the accused person's son narrated all that transpired on the day that the deceased persons herein were killed. He stated that previously, the accused person had been admitted for mental anxiety; that on the fateful morning, the accused looked stressed despite the fact that they had spent the day well. PW4 stated that the accused herein and her husband had marital issues and that the husband had mistresses which caused depression to the accused herein. It was her evidence that the accused had sleeping problems and there was a time when together with Charles Murimi (deceased), they took the accused person to Outspan Hospital where she was admitted for three weeks in relation to mental illness. PW8 also testified that the accused person previously had been under medical treatment by one Dr Mukui. Further, Dex 1 that was produced before this court also noted that the accused herein had been attended to, sometime back on October 17, 2019 at Outspan Hospital for presenting delusions when she was put on mental treatment. Of importance to note is the fact that the offence herein was committed on the night of 09/10<sup>th</sup> April, 2020; therefore, would it be safe to conclude that indeed the accused herein was at the time of the commission of the offence labouring from a mental illness?

34. In Leonard Mwangemi Munyasia Vs Republic (supra), the court observed that: -

' We are of the view that a court cannot, as the trial Judge in this matter did, assume without considering surrounding circumstances that the suspect was not suffering from mental



disorder at the time the offence was committed. Thus it is permissible for the court to rely on evidence from which it can form an opinion regarding the mental status of the accused person at the time when the crime was committed. Such evidence will be based on the immediate preceding or immediate succeeding or even the contemporaneous conduct of the accused person. There is also medical history of the accused person to be considered as the backdrop.'

35. In reference to the above case, it is outright that the accused herein even prior to the commission of the offence she is charged with, had previously shown signs of mental illness. The same was corroborated by PW8 who categorically testified that the accused herein was suffering from a mental disorder called Major Depression Disorder. Though no medical documents for Mathari Hospital were availed to court, DW 1 testified that the accused was once treated there for a mental disorder.
36. It is my considered view therefore, based on unimpeachable evidence of PW 3, PW4, DW1 but more so PW8 concerning the history and immediate events preceding the commission of the offence, that, the accused person was suffering from a mental related illness. Further, regarding the events of 09/10/ April, 2020, the same are consistent with the evidence of the surrounding circumstances before the date, with regard to the accused's mental state.
37. Having come to that conclusion, the only way for the court to proceed is as provided under Section 166 (1) of the Criminal Procedure Code. Accordingly, I make a special finding under Section 166 (1) of the Criminal Procedure Code that the accused is guilty of murder contrary to Section 203 of the Penal Code, but was insane at the time she committed the offence. I enter a special finding of Guilty but Insane.
38. It is so ordered.

**DELIVERED, DATED, AND SIGNED AT EMBU THIS 15<sup>TH</sup> DAY OF FEBRUARY 2023.**

**L. NJUGUNA**

**JUDGE**

