



**Republic v Okumu (Criminal Case E005 of 2022)
[2023] KEHC 839 (KLR) (2 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 839 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL CASE E005 OF 2022
JR KARANJA, J
FEBRUARY 2, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

MARYANNE PATRICIA OKUMU ACCUSED

JUDGMENT

1. As per the information filed herein on April 20, 2012, the accused, Maryanne Patricia Okumu, faces a charge of murder, contrary to section 203 as read with section 204 of the [Penal Code](#), in that on the April 5, 2022 at Osieko beach Bunyala-Busia County murdered Millicent Odeva Ondera.
2. The case for the prosecution arises from the facts that the deceased, a popular business lady at Osieko beach was on the material date at about 7.00 p.m. in search of the accused for allegedly taking away and breaking her bottle of soda. In the process, she met Kiza Nuru also known as Harriet (PW 2) and both learnt from one Belinda that the accused was in her house. The deceased then proceeded to the accused's house. Thereafter, Harriet was informed by one Brian that the deceased had been killed by the accused.
3. On receiving the information, Harriet (PW 2) rushed to the accused house and found the deceased lying down near the door step. She then left the scene and proceeded to call a brother of the deceased called Nelson (PW 3) who confirmed that the deceased had been looking for the accused. He then proceeded to the house of the accused where he found the deceased on the ground appearing to have been stabbed on the chest with a knife and bleeding profusely. He did not find the accused at the scene and together with others they rushed the deceased to the hospital where she was pronounced dead.
4. The area senior chief Samuel Ochieng Oduma (PW 1) was notified of the incident about 8.00 p.m. on the material date. He thereafter proceeded to the scene of the incident and in the process found one



Velma Adhiambo who revealed the circumstances under which the incident had occurred and where the accused had gone within the area of Bondo.

The chief pursued the accused and found that she had already been arrested by police officers from Bondo. He then took her back to the area where the incident had occurred and placed her in custody.

5. Upon his return to the scene of the incident the chief recovered the probable weapon used in assaulting the deceased i.e. a knife which was broken into two pieces. The chief recovered only one part of the knife (P EX 1 (a)) while the other part was recovered in his absence. The part he recovered was the knife's handle. The other part was the sharp edge of the knife (P EX 1 (b)).

Dr Paul Oloo (PW 4), carried out a post mortem on the body of the deceased and compiled the necessary post mortem report (P EX 2) indicating that the deceased died from a stab wound to the chest.

6. Eunice Namache (PW 5), attached to the Directorate of Criminal Investigations (DCI) Busia carried out the necessary investigations and gathered that the accused had confronted and quarreled with her husband inside a bar belonging to the deceased and in the process broke soda bottles belonging to the deceased before taking off with the deceased pursuing her to pay for the broken bottles. The two engaged in a fight and in the process the accused stabbed the deceased and fled from the scene before being arrested and went to Usenge police station for her own safety from the wrath of the local villagers who wanted to lynch her. She was eventually charged with the present offence.
7. The accused denied the charge and stated in her defence that she was a fishmonger and had met the deceased on the material date at about 2.00 p.m. when they both headed to a local hospital. Thereafter, they left the hospital but she declined the offer by the deceased to visit her (deceased) home. She (accused) proceeded to her home but did not find her husband. She went in search of him and was informed by one Velma that he was at a local barber shop. She found him drinking a soda together with an energy drink. He gave her money for drugs and she returned to her home accompanied by Velma.
8. The accused stated further that she later visited her brother and returned home at 6.30 p.m. She then met Harriet (PW 2) who told her that the deceased was looking for her and that she should run away if she saw her (deceased). She (accused) entered her house and shortly thereafter, the deceased appeared at the scene and angrily confronted her while accusing her of breaking a soda bottle. She (deceased) attacked her (accused) but she put up resistance resulting in the deceased falling down and injuring herself. She made an attempt to assist the deceased but realized that she was bleeding.
9. The accused went on to state that she screamed for help and called the brother of the deceased who appeared at the scene even as she was leaving to proceed to report the incident at Bondo in Siaya County. She was however told to return to her area at Oseko Busia County to make the necessary report. She was however, arrested at the chief's office in Oseko where she had gone to make a report. She later learnt that the deceased had died from her injuries inflicted when she fell down. She (accused) contended that she did not stab the deceased with a knife and that she was not in possession of a knife on the material date. She had no idea where the pieces of a knife produced in court came from. She further contended that the deceased invaded her inside her house and in the process pushed her out in self-defence. That, she had no intention of killing the deceased as demonstrated by the fact that she even went to her rescue when she asked for help.
10. The offence of murder is complete and fully established where a person of malice aforesought causes the death of another person.
11. The prosecution was thus expected to prove by way of credible and sufficient evidence that the accused violently assaulted the deceased with the intention of causing her death.



12. With regard to the cause of death it was apparent from the evidential facts availed herein from both sides that the deceased died from an injury inflicted on her chest. The post-mortem report indicated that the death arose from a stab wound. This implied that the deceased was stabbed on her chest with sharp object which according to the prosecution was a knife which was broken into two pieces and which was found to contain fresh blood stains while at the scene of the offence. However, there was no forensic evidence from the prosecution to establish that the knife was the actual murder weapon or that the fresh blood stains found on it belonged to the deceased or the accused or any other person.
13. Be that as it may, the evidence that the cause of death was a stab wound to the chest was not disproved nor disputed. Whether the stab wound was caused by a knife or any other sharp object may not be regarded as a vital factor considering that the injury was the resultant effect of a criminal act of assault against the deceased rather than an accidental act.
14. The evidence that the injury was inflicted while the deceased was involved in a physical confrontation with the accused was cogent and credible enough to imply that the person responsible for the fatal injury was the accused. The circumstances even in the absence of direct evidence suggested as much as there was no evidence whatsoever suggesting that the deceased could have deliberately injured herself even though it was apparent that she was the aggressor in as much as she angrily confronted and attacked the accused inside her house.
15. Indeed, the defence raised by the accused was an admission that she assaulted the deceased in self defence. Although self defence is an acceptable defence to a charge of murder, it was not herein available to the accused on account of the excessive force she used against the deceased even if she was defending herself.

In admitting that she assaulted the deceased, the accused in effect admitted that she was responsible for the death of the deceased but contended that she did not intend to do so. However, the fact that the deceased suffered a deep injury to the chest inflicted by a sharp weapon or object indicated otherwise.
16. A person who inflicts a deep injury to the chest of another using a sharp object would definitely be assumed to have intended the death of the assault victim. The defence that the accused did not intend to cause the death of the deceased could not hold in the circumstances of this case. She ought to have known better than to use excessive force thereby causing very serious injury on the deceased which later proved fatal.
17. For all the reasons foregoing, it is the finding of this court that the accused of malice aforesought caused the death of the deceased. The prosecution case against her was thus proved beyond reasonable doubt. She is accordingly found guilty as charged and convicted.

J R KARANJAH

J U D G E

DATED AND DELIVERED THIS 2ND DAY OF FEBRUARY, 2023

