



REPUBLIC OF KENYA



**Republic v Manasi (Criminal Case 6 of 2013)  
[2023] KEHC 2766 (KLR) (24 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2766 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL CASE 6 OF 2013  
WM MUSYOKA, J  
MARCH 24, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**JOHN LARRY MANASI ..... ACCUSED**

**JUDGMENT**

1. John Larry Manasi is charged with murder, contrary to section 203, as read with section 204, of the *Penal Code*, Cap 63, Laws of Kenya. Particulars of the offence allege that on January 20, 2013, at around 20.00 Hours, at Ebukhuya Village in Ebusundi Sub-Location, within Vihiga County, he murdered Flora Angila Opanga, hereinafter referred to as the deceased. He pleaded not guilty to the charge on February 11, 2013. The hearing of the case for the prosecution commenced on May 18, 2015. 6 witnesses testified.
2. The first on the stand was Billy Arisitariko, who testified as PW1. He was the village elder for Emukhaya Village. He stated that on January 20, 2013, he was at his home in Emukhaya village, at 7. 30 PM, when he heard noises from the road. He recognised that of one John Manase, also known as Yaya, the accused herein. The people at the road were disagreeing loudly. John was telling his wife to get up and go home. As he knew John to be a rough person, he decided to call his brother, who was a pastor to help cool him down.
3. Diana Amakoye testified as PW2. She was a resident of Emukhaya Village, and a student at Obunanga Girls Secondary School. She was at home on January 20, 2013, at 8.00 PM, in the kitchen, cooking. She heard noises outside their home, and she informed her mother, who said it was probably the accused, who, whenever he was drunk, made such noise. She went outside the home to investigate. There was moonlight, and she was able to see the accused, wearing a white shirt and a pair of black trousers. He was standing, and there was someone on the ground, and a bag next to the person. He was telling the person on the ground to get up. He was referring to that person as Mwiranyi, who PW2 knew as Rose.



- The person on the ground did not respond, and she did not get up. Then a pastor, Stephen Amokoye, came to the scene, holding a lantern lamp, and asked the accused what he was doing. The accused started to insult the pastor, who just kept quiet. The accused thereafter left for his home.
4. Eunice Mulemia Amakoye testified as PW3. She used to assist Pastor Stephen Amakoye at his posho mill. She was at the posho mill on January 20, 2013, and after closing time she went home. PW2 was preparing supper, and after sometime, PW2 told her that there was noise coming from outside the home. Her husband, PW1, told her that she did not know what the noise was about. She went with PW1 to the home of Pastor Amakoye. She followed Pastor Amakoye to the road, where she found Mwiranyi dead. The pastor had a kitchen lamp, and a small crowd had formed at the scene. PW1 instructed her to inform the local assistant Chief of the incident, and he called him on phone. The accused was at the scene, and was telling Mwiranyi to wake up, and go home. When the pastor told him that she was dead, he insulted the pastor. She said that Mwiranyi had told her that she had chest problems, and that she had had a stomach operation.
  5. Rose Ayumba followed as PW4. She was a farmer from Emutere, Emusundi. On January 20, 2013, she was on her way from Kima, where she had gone to sell cane, when she saw the accused beating his wife, known as Imwiranyi. She said that happened at 8.30 PM, the beating happened next to the gate of PW1. Her husband was the one who called her, and asked her to come and see the accused kill his wife. PW4 asked the accused to go, and kill her, at his home, as he had begun beating the deceased at her, PW4, gate. There was moonlight, and the deceased was crying that the accused was killing her. The deceased rose, and left towards the gate of PW1, where she fell down, and the accused followed her there and continued to beat her. She said that the accused was using his hands to assault his wife.
  6. Manase Marende Amuyunzu testified as PW5. He was at home at Ebusundi, on January 19, 2013, when, at 8.00 PM, he heard hooting from motorcycles, and people shouting. They went in the direction of the home of Larry. They broke into his house, and removed stuff from inside, after which they torched the house. When he enquired, he was told that Larry's wife, Susan Amila, was dead on the road. He said that the body was close to the house, and many people were surrounding the body. He stated that the deceased had had an operation in a hospital at Mbale. He said that he did not know what had caused her death, and that there were no differences between the deceased and Larry. He denied making a statement where he had said that the accused had been forced to marry the deceased. He said that he did not make a statement to the police to effect that Larry had threatened to kill the deceased. He said the deceased was called Flora Angila Barnaba. He was declared a hostile witness.
  7. Philp Ka'warom Athero testified as PW6. He was the pathologist who conducted a post-mortem on the body of Flora Angila, on January 22, 2013. She had a fracture of the ninth rib, and congested lungs. There was an old scar in the urinogenital system, above the pubic area. There was a fracture of the neck and the right rib. The spinal cord was severed. There were several external bruises. He opined that death was caused by the head and neck injuries. He added that there were multiple bruises and a dent on the temporal region of the skull, and there was a neck fracture. He stated that the deceased died of the injuries that she sustained. He said that there were plenty of unusual fluids in the body of the deceased. He said that he did not examine her uterus, and did not know whether it had been removed. He said that her clothes were normal, as they had no blood stains nor tears. He could not establish whether or not she had a history of hypertension. He stated that it was possible that she bled as a result of the assault, but her clothes had no blood stains. He said it was possible that her body might have been dressed in clean clothes. He also said that a neck fracture could occur from a body being dropped to the floor of the mortuary.
  8. I ruled, on December 24, 2018, that the accused person had a case to answer, and I put him on his defence. The defence hearing happened on June 28, 2022. The accused gave a sworn statement. He



said that he was a farmer and trader from Ebusundi, and the deceased, Flora Angira, was his wife. He said that on January 19, 2013, the deceased was ill, for she had had an operation to remove fibroids, and it was he who had taken her to hospital. He said that on January 20, 2013 he asked her to go to hospital, instead of going to work. She said she would go to hospital on January 21, 2013. On January 20, 2013, he urged her again to go to hospital. She insisted she would go to hospital the following day. They went to the shop and opened it, and operated it. He went out at midday to buy more stock. When he got back, he found that she was not doing well. He hailed a motorcycle taxi, one came, but she still refused to go to hospital, insisting that she would go the following day, January 21, 2013. At 8.00 PM, she said that she wanted to go home early, as she was not feeling well. She left him at the shop, and went. He decided to follow her, after 10 minutes. He closed the shop. Some 200 metres from the shop, he found that she had fallen to the ground. She was surrounded by many people, who he did not recognise nor identify, as it was night-time. He asked them what was happening, but then he saw the deceased lying on the ground. One of the people in the crowd said that he was the one who had been with her, and he must have killed her. The crowd began to beat him, and he had to go to the assistant Chief and the police for assistance. When he went back home, he found that his houses had been set ablaze. He said that he asked the deceased to arise, so that they could go home, and that was after he found her lying on the ground. He said that he never beat her. He said that the deceased was his wife, and he loved her.

9. At the close of the oral hearings, the accused, through his Advocate, Mr Flavian Mulama, filed written submissions, dated October 14, 2022, complete with case law. I have read through the said submissions and noted the arguments made. The principal submission is that none of the witnesses, except for PW4, witnessed the accused assault the deceased in a manner that would have caused her demise. It is submitted that PW4 only saw the accused land 2 slaps on the deceased, which could not have caused the injuries enumerated by the pathologist, that is PW6. It is submitted that malice aforethought was not established, and that there are doubts as to how the deceased met her death in the hands of the accused.
10. The elements of the offence of murder, as set out in section 203 of the Penal Code, are the fact of death, the cause of the death, the role of the accused person in the cause of the death, and the fact that the death is caused by the accused with malice aforethought.
11. From the material before me there is proof that the deceased in fact died. All the prosecution witnesses PW3 and PW5 testified to the fact of her death. The pathologist, PW6, conducted a post-mortem on her body, after it was identified by relatives. The cause of the death is also not in dispute, it was said to be due to severe head and neck injuries, which included a fracture of the neck, a dent on the temporal region, a fractured rib, a severed spinal cord and extensive bruising. The contestation is on whether the accused caused the death, and, if he did, whether it was with malice aforethought.
12. So, who was responsible for the death of the deceased? The case presented by the State is that the deceased was assaulted by the roadside by the accused, and she died of the injuries inflicted at that incident. PW1 did not go to the scene, but only heard voices, while in his house, coming from the roadside. He did not venture outside to investigate. He said he heard the voice of a person he identified as John Manase also known as Yaya. He said that Yaya was telling his wife to get out, so that they could go home. PW2 went to the scene. She saw the accused at the scene. He was telling a person who was on the ground to get up. She identified the person on the ground as Rose, whom the accused was referring to as Mwiranyi. The person on the ground did not get up. Other than saying that the accused was present, standing there and telling the person on the ground to get up, she did not say that she saw him do anything to the person on the ground. PW3 was at the scene too. She found Mwiranyi already dead. She saw the accused at the scene asking the said Mwiranyi to get up and go home, but was told by a pastor who was with PW3, that she was already dead. PW4 was also at the scene. She said that she saw the accused person beating his wife, Omwiranyi. The wife was crying, saying that the accused was



- killing her. She said she witnessed as the accused used his hands to assault his wife. PW5 was declared a hostile witness. He testified in a manner that suggested that he did not go to the scene, and that what he told the court was what he was informed by other individuals, that the wife of the accused was dead on the road, but he did not know what caused her death. PW6, the pathologist, presented evidence which suggested that the deceased sustained severe injuries, consistent with a severe beating.
13. The case by the accused is that he had spent the day with his wife, the deceased, at their business, a kiosk or eatery, that she operated. She opted to leave early, as she was feeling unwell. She left him behind, but he decided to follow her after 10 minutes. He found her lying on the ground, some 200 metres from their shop, surrounded by a crowd of people. He did not recognise any of the people in the crowd, but they claimed that he had killed her, and he fled for his safety, and went to the police.
  14. A number of things arise from these testimonies. One of them is the identity of the person who was said to have assaulted the deceased. PW1 identified the person whose voice he heard that fateful day as John Manase alias Yaya. PW2 similarly identified the person she saw on the road, standing next to another person who was on the ground, as Yaya. PW3 also identified the person she found on the road, with Mwiranyi, as Yaya. PW4 talked of witnessing Yaya assault his wife, Omwiranyi, who was crying that Yaya was killing him. PW5 talked of the houses of Larry being burned down, on accusations that he had killed his wife. The accused person herein is charged as John Larry Manasi. The charge makes no reference to any alias, least of all Yaya. Except PW1 and PW2, none of the other persons who referred to the name Yaya attempted to connect it to the accused person. Only three witnesses mentioned the name of the accused, PW1 and PW2 talked of John Manase, while PW5 talked of Larry, but PW1 and PW5 were not at the scene, and did not claim to have had witnessed the accused assault the deceased.
  15. Secondly, the person who is alleged to have been killed is named in the charge as Flora Angila Opanga. The witnesses who testified used various names to refer to the person who was with Yaya. PW1 did not mention the name of the deceased. He merely said that John Manase alias Yaya was telling his wife to rise up and go home. PW2 knew the person that Yaya was addressing as Mwiranyi or Rose. PW3 referred to the person on the ground merely as Mwiranyi. PW4 referred to her as Imwiranyi and Omwiranyi. PW5 called her Susan, and later referred to her as Flora Angila Barnaba.
  16. The identity of the person who was killed, and of the person who is alleged to have killed him, is at the core or heart of criminal proceedings. Some of the persons who were allegedly at the scene and saw with their own eyes the person who was allegedly killed, and the person who allegedly killed her, did not refer to the 2 by the names that appear in the charge document. PW2, PW3 and PW4 alleged that the person they saw at the scene, and who is alleged to have perpetuated the killing, was Yaya. They never said that that Yaya they saw at the scene is the person now in the dock, John Larry Manasi. It is only PW2, who said that he is also known as John Manase. PW1 also connected the name Yaya to the accused, who said he is also known as John Manase. However, PW1 did not go to the scene, and he claimed to have only identified the said John Manase alias Yaya by his voice. The other witness, PW5, did not connect the name Yaya with the accused.
  17. Should I give much weight to this? The standard of proof in criminal cases is placed at beyond reasonable doubt. The prosecution is bound to establish beyond reasonable doubt that the person alleged to have committed the murder is the person in the dock. Where his identity is in doubt, then that standard will not have been attained. I note that the prosecution did not attempt to have PW3 and PW4 confirm the actual identity of the person they merely identified as Yaya. It could be that the accused person was commonly or popularly known as such by the local community, and, therefore, it came naturally for it to identify him as such. However, I am convinced, from the testimonies of PW1 and PW2, that Yaya and John Manase refer to the accused person herein, John Larry Manasi.



18. Regarding the deceased, I have indicated that the charge talks of a Flora Angila Opanga. The question then, that I should answer, is who was the deceased person in this case. Who was identified by the witnesses as the person killed by the accused? As stated above, the charge refers to Flora Angila Opanga. The prosecution witnesses refer to the person at the scene as Mwiranyi, Imwiranyi, Omwiranyi, Rose, Susan Amila and Flora Angila Barnaba. The witnesses at the scene, that is PW2, PW3 and PW4 saw a person they identified as Mwiranyi, Imwiranyi, Omwiranyi and Rose. None of these individuals tried to demonstrate that Mwiranyi, Imwiranyi, Omwiranyi and Rose all referred to the deceased the subject of the charge, Flora Angila Opanga. PW1 did not mention the name of the wife of the accused, nor make a reference to a Flora Angila Opanga. PW5 talked of a Flora Angila Barnaba. The documents put in proof by the prosecution did not help matters. The post-mortem report, dated January 22, 2013, is in respect of a Flora Angila. It does not bear the names Mwiranyi, Imwiranyi, Omwiranyi, Rose and Flora Angila Barnaba that the prosecution witnesses talked about.
19. Just as with the identity of the perpetrator of the murder, I ask the question, was the person that the prosecution witnesses testified about as being the victim of the assault the same one that is the subject of the charge? I raise this because these witnesses did not state that Mwiranyi, Imwiranyi, Omwiranyi, Rose and Flora Angila Barnaba was the same person as the Flora Angila Opanga named in the charge. Burden of proof lay with the prosecution to establish that the accused person committed murder on the person named in the charge. That burden included, where the deceased person bore or used or was known by various names, connecting those various names to the name indicated in the charge. I repeat what I have stated above, regarding the accused, it could be that the deceased was also known by the names mentioned by the prosecution witnesses, that is Mwiranyi, Imwiranyi, Omwiranyi, Rose and Flora Angila Barnaba, but the trial court would have no way of knowing whether those names referred to her, unless the witnesses themselves connected the names to the deceased. There is no room for speculation or conjecture in criminal cases. The standard of proof on the part of the prosecution is placed at beyond reasonable doubt. There was a duty to prove that the deceased person named in the charge, Flora Angila Opanga, was also the person referred to as Mwiranyi, Imwiranyi, Omwiranyi, Rose and Flora Angila Barnaba. The burden of proof lies throughout on the prosecution, and shifts to the accused person only in a few instances.
20. Would that be fatal to the prosecution case? I do not think it is. Firstly, it is not disputed that the deceased died. PW2, PW3, PW4 and the accused are all positive that she was lying at the gate of PW1 on the material night, and that she probably died there. Despite the various names used to refer to her, there is also no doubt that the person who lay either dead or gravely injured at the gate of PW1 was the wife of the accused. The accused confirmed it in his defence statement. The only contention is whether the fatal injuries were inflicted by him.
21. So, was it the accused person who inflicted the said injuries? PW2 and PW3 did not see him do anything to her. PW4 said that she saw him slap or beat her twice with his hands. PW1 and PW5 were not at the scene. The prosecution witnesses testified that they came to the scene and found the 2 together, the accused and the deceased. PW3 apparently came to the scene when she was already dead. PW2 did not say whether or not she was dead, when she saw her lying at their gate, for she said she was on the ground, and the accused was speaking to her, but she did not respond. Apparently when PW4 saw her at her own gate, she was still alive, was walking and talking, she rose up and walked towards the gate of PW1. She said that she witnessed beatings at her gate, which she said amounted to just 2 slaps. That then leaves it open to the presumption that the 2 were together long before PW2, PW3 and PW4 saw them. It is probable that the assault may have started before PW2, PW3 and PW4 happened at the scene. PW2 and PW3 did not witness any assault, but PW4 did, but what she saw could not account for the very grave injuries noted by the pathologist, PW6. PW1 was not at the scene, but said he heard



- the accused and the deceased disagree loudly, but he did not allude to any fight or assault. He merely heard the accused ask the deceased to arise and go home, albeit in a harsh tone. There is not much, from these testimonies, that points directly to culpability on the part of the accused.
22. However, the testimonies point to existence of circumstances that suggest that the accused might have severely beaten the deceased prior to the witnesses showing up. That is to say that the serious injuries sustained by the deceased, and which probably caused her death, were inflicted prior to these witnesses showing up. The facts place the 2 together at the time when the deceased was seen gravely injured by PW2, PW3 and PW4. Unfortunately, none of these witnesses described the physical condition of the deceased, and none of them tried to assist her. PW2 just saw her lying there, she did not describe the condition in which she was in. PW3 said she was dead, but did not indicate her physical condition. PW4 merely talked of beatings, but did not describe how the deceased was physically. I cannot, therefore, tell at that stage what her condition was like. Was she already badly hurt by then? Was she bleeding? Was she groaning in pain? What was her state? The witnesses did not help with that.
23. What, however, intrigues is what the accused said in his defence on oath, that he found her already badly injured and surrounded by a crowd. He said that he had been with her, during the day, at their kiosk, before she decided to leave for home early, on account of illness. She left alone, but he followed her, after 10 minutes, only to find her, 200 metres from the shop, surrounded by a crowd, badly hurt. The prosecution witnesses who were at the scene did not talk of him finding the deceased at the scene. PW3 saw her with him at her gate, where he was slapping her, and she chased them away, whereupon the deceased collapsed at the gate of PW1. No evidence was led by the prosecution, to show that the 2 left together, but there is evidence that the 2 were together when the other witnesses emerged, and at that time it would appear that the deceased was already badly hurt. PW2 and PW3 testified that the pastor, who was said to be a brother of the accused, spoke to him, asking him what he was doing and telling him his wife was already dead, but he insulted him instead. Probably the accused was drunk, probably he was not, but his reaction suggests a hostile individual, in the given circumstances. If indeed it was true that he stumbled on his wife badly hurt, and his own brother came to the scene to help, why was he hostile to him? Why would he be hostile at all in the circumstances, if he was innocent of what had befallen his wife?
24. I am persuaded that the evidence presented by the prosecution, placed on record against the accused, placed him at the scene, he was in the company of the deceased, he assaulted her and she died. The injuries noted by the pathologist pointed to a severe assault, that resulted in a fractured neck, a fractured rib, a severed spinal cord and a dent on the temporal region of the forehead. The prosecution, having placed the 2 together, at the time the deceased was badly injured, the burden shifted to the accused to explain himself. The explanation given in his defence was not adequate, for the witnesses placed the 2 together, he was seen assaulting the victim, and he was hostile to those who sought to know from him what had happened. Consequently, I do find that the accused caused the death of the deceased.
25. The next consideration is whether he caused the death with malice aforethought. Did he have malice aforethought? Malice aforethought is defined in section 206 of the [Penal Code](#). Section 206(b) states:

“Malice aforethought

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.”

26. Under section 206, malice aforethought is to be inferred from an intent to cause death or to cause grievous harm, or the knowledge that the act causing death could cause death or grievous harm, or an intent to commit a felony, or an intention to facilitate escape from custody of a person and in the process a death is caused. Of course, *mens rea* is not a physical act, but a deduction to be made from the physical act, the *actus reus*, or conduct of the accused. So, what I need to consider here is whether the accused person had the necessary *mens rea* for the offence of murder.
27. One of the factors considered would be the nature of the injuries on the body of the deceased person. The post-mortem report on record, indicates that the police suspected strangulation, as the body did not have any physical injuries. The pathologist noted congestion of the lung tissues, fracture of right rib, an old transverse supra-pubic scar, a dent on the skull temporal region right side, a fracture of the neck, and that the nervous system, the spinal column and the spinal cord were grossly severed. It was opined that the cause of death was fatal head and neck injuries. The injuries narrated in the post-mortem report, and by the pathologist in court, were so severe that death was certain, particularly the fracture of the neck, the dent on the skull and the severing of the spinal column and spinal cord. Such injuries could only have been inflicted by a person who intended to cause the death of another or who was indifferent to such outcome. Having found that the circumstances pointed to the accused person causing the death, it is my conclusion that he caused the death with malice aforethought.
28. In view of everything stated above, I do find the accused herein guilty of the offence of murder, of Flora Angila Opanga, contrary to section 203 of the Penal Code, as read with section 204 thereof, and I convict him accordingly, under section 322 of the [Criminal Procedure Code](#), Cap 75, Laws of Kenya. For the purpose of sentencing, I hereby direct the Vihiga County Director of Probation and Aftercare Services to assess the antecedents of the accused person, and to get the views of the family of the deceased and the community, and file a report thereon within 30 days.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 24<sup>TH</sup> DAY OF MARCH 2023**



**W MUSYOKA**

**JUDGE**

**Mr Erick Zalo, Court Assistant.**

**Ms Kagai, instructed by the Director of Public Prosecutions, for the Republic.**

**Mr Flavian Mulama, Advocate for the accused person.**

