



**Republic v Kiome (Criminal Case 50 of 2017)
[2023] KEHC 1645 (KLR) (2 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 1645 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL CASE 50 OF 2017
RB NGETICH, J
MARCH 2, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

DORCAS NKATHA KIOME ACCUSED

JUDGMENT

1. The accused herein Dorcas Nkatha Kiome, was charged with offence of Murder Contrary to Section 203 as read together with Section 204 of the [Penal Code](#).
2. The particulars of the charge sheet is that: On October 27, 2017 at Kahawa Wendani Estate, in Ruiru Sub - County within Kiambu County murdered Faith Kagwiria Kiremi.
3. On November 14, 2017 the charge and its full particulars were read over and explained to the accused who pleaded not guilty and a plea of not guilty was entered. The prosecution called a total of nine witnesses.
4. Pw1 Belinda Kangai testified that she was at her kiosk at around 11.00am when she saw the deceased at the gate who signaled her without talking. She approached her and the deceased asked her to buy her credit. She said the deceased had rapped herself in a lesa that was dripping wet. She asked her what was the issue and the deceased informed her that Carol had stabbed her. Pw1 said she screamed and Pw2 Benard went to the scene and the deceased repeated the same words by saying ‘‘ I have been stabbed by Carol ‘’. She said she proceeded to Carol’s house where at the door she saw a knife stained with blood and also saw blood outside Carol’s house. She said together with her neighbors they rushed Faith to Neema Hospital.
5. Pw2 Bernard Orero testified that on July 26, 2017 at 11.00 a.m, he was at his shop when he heard someone calling his name and on checking, he saw that it was Pw1 who informed him that Faith had been stabbed. He went to Faith who told him she was stabbed by Carol. He said he knew the accused



by that name but later came to know the accused's full name. He entered Carol's house and found Carol holding the knife that had been used to stab Faith. He called the police but they took long to arrive. Pw2 took the accused to Kahawa Police PoSt

6. Pw3 Dorothy Njeru a Pathologist who is a holder of MBCHB from UON & Masters in Human Pathology from UON, Masters in Forensic Medicine & Pathology from the University of South Africa testified that on October 30, 2017, she received a request from PC Fredrick Onyaya to conduct an autopsy on the body of Faith Kagwiria. Upon performing postmortem examination, she concluded that the cause of death was hypovolemic shock due to penetrating sharp force trauma on the abdomen. He produced the postmortem report as Exh1.
7. Pw4 Evans Ouma a Police Officer testified that on October 27, 2017 while in the report office, a person called Bernard Nyakundi arrived at his office with other members of the public and reported that a lady had been stabbed by another. He produced in court the knife which had blood stains. He said the accused was arrested while the victim succumbed to the injuries. He said he did not visit the scene.
8. Pw5 Paul Njehia who is a Senior Investigator IPOA testified that he is a Forensics Investigation Officer based in GSU, DCI and in Korea on forensic investigations. He said on October 27, 2017 at 9.00pm, he got a call from Ruiru DCI to attend a scene in Kahawa area where there was a reported stabbing incident. He went to the plot with two mabati rooms separated by a corridor. Outside one room was a pool of blood and there was a kitchen knife at scene alleged to be Murder weapon. He documented the scene and also went to view body at St Francis Catholic Hospital Kasarani. He said the body had open wound. He took nine photos as: -1&2. General view of mabati rooms3&4. Close up view of blood stains on the corridor.5&6 Close up view of kitchen knife.7 Full body length view of body of victim.8 Close up view of victim's face.9 Open wound on deceased.

And proceeded to prepare a certificate. He adduced the photos as exhibits.

9. Pw6 PC William Magana testified that on October 27, 2017, he received a call from a Police Officer at Kahawa Police Post informing him that his sister had been stabbed at Kahawa and was at Neema Hospital; he said the victim succumbed on July 30, 2017. He identified her body for the post mortem.
10. Pw7 Elizabeth Waithera Onyiego testified that she worked as Government Analyst since 1993. She is holder of BSC with Chemistry from University of Nairobi & Masters of Science in Applied Analytical Chemistry from Kenyatta University. On November 1, 2017 at laboratory of Government Chemistry Nairobi, she received items listed below from No 80974 PC Benard Bett of DCI Githurai. Items were accompanied by exhibit memo form.
 1. Item labelled (a) was a knife in brown paper.
 2. Item labelled (b) was blood in a bottle indicated as for deceased Faith Kagwiria.
11. She found the knife to be moderately stained with blood of human origin. The DNA profile generated from blood stains on the knife matched the DNA profile generated from the blood samples labelled (b) and indicated as from the deceased. She stated that it was 100% match. She produced the report dated August 29, 2018.
12. Pw8 Bonface Ndolo Mueni testified that he operates a Boda boda at Kahawa Wendani Ward Mamaland area and on October 17, 2017 at around 11.20am while on duty at the stage, he heard rumors of someone having been stabbed and went to the area where he saw a woman who had been stabbed. He said the victim was his customer for almost three (3) months. He took the victim to the hospital using his motorcycle. After dropping the victim at the hospital, he went back to the scene and found the suspect having been tied by members of the public and was holding the knife used to stab the victim.



13. Pw9 PC Bernard Bett testified that he was attached to DCI Headquarters performing investigation duties. He said in the year 2017 he was attached to DCI Crime Office. On October 28, 2017 at around 8.00 a.m, he reported at Githurai DCI office and was informed by his in-charge about murder reported at Kahawa Sukari Police Post He proceeded to Kahawa Sukari Police Post and found accused was already in custody held over suspected murder. He went to the scene of murder at Mamaland within Kahawa Sukari. At the scene, he saw blood stain at door steps of accused's home; he informed the scenes of crime personnel who went and documented the scene. He requested for blood samples to be drawn from the deceased to confirm if it matched the blood sample on the knife and took the knife and blood samples to Government Chemist for analysis.
14. Upon closure of prosecution case, the court found that the prosecution had demonstrated a prima facie case to warrant accused being placed on her defence.
15. The accused testified that on October 27, 2017, she and the deceased quarreled and the deceased reached out for a knife; she said she struggled for the knife with the deceased and there was a push and pull and a stool which was outside hit them and they both fell down; after falling down, she saw blood. She said people went to the scene and tied her hands. She said she saw the knife down with blood. She said they had not quarreled before with the deceased and the incident was by bad luck. She said the deceased was her friend.
16. On cross-examination, she said she had removed the knife while she was removing a spoon to feed the children. She said the disagreement was due to the children left under her care. She said she also got cuts on her hand as she was struggling with the knife.
17. At the close of the defence case, the accused opted to file written submissions while the prosecution choose to rely on the evidence on record.

Accused's Submissions

18. Counsel for the accused filed submissions on November 28, 2022. He submitted that the time difference between when the incident happened and the time when the victim succumbed to her death could not be accounted for and the accused is not therefore wholly to blame for the accident. Counsel further submitted that there was no eye witness who witnessed the incident and there was therefore no evidence brought by the prosecution to point at the accused as having committed the offence; that there was no blood sample taken from the accused.
19. Counsel further submitted that there was no malice aforethought established by the prosecution; that the prosecution did not adduce evidence on the intention to cause death by the accused. He submitted that the deceased had one stab wound which is a clear indication there was no intention to cause death.
20. Counsel submitted that the accused would have fled from the scene if her intention was to commit the incident.
21. Counsel further submitted that the accused relied on self defence; that she was defending herself from the deceased who wanted to stab her after a quarrel ensued over a child left under the care of the accused; that the intention of the accused was to disarm the deceased and the injuries sustained on the deceased cannot be solely blamed on the accused.
22. Counsel urged the court to find the prosecution failed to prove its case beyond a reasonable doubt.



Analysis And Determination

23. I have considered the evidence adduced by the prosecution and the defence together with submissions by defence counsel and find that the issue for determination is whether the prosecution has demonstrated the ingredients of Murder beyond a reasonable doubt as set out in Section 203 of the [Penal Code](#) which provide as follows: -

“ Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder.”

24. From the wording of the above section, the prosecution must prove beyond any reasonable doubt,
- i) the death of the deceased,
 - ii) the cause of death and proof that the deceased met her death as a result of an unlawful act or omission on the part of the accused and
 - iii) Whether mens rea was proved against accused.

(i) Death of the victim

25. With regard to the death of the deceased, it is not in dispute that the deceased succumbed to the injuries. She died while receiving treatment at St Francis Hospital. This position was corroborated by the evidence of Pw3, pw4, pw5, Pw6, Pw7 and Pw8.

(ii) Whether death was as a result of an unlawful act or omission on the part of the accused

26. The Evidence of Pw3 confirmed the cause of death as hypovolemic shock due to penetrating sharp force trauma on the abdomen as per the post-mortem report. The post-mortem is sufficient proof that the deceased died.
27. The cause of death of the deceased was caused by the stab. The Accused testified that she was struggling to disarm the deceased who was holding a knife and they fell on the ground and saw blood on the floor. It is not in dispute that the stab is the deceased’s cause of death as she succumbed to the injuries while in the hospital receiving treatment.
28. The accused argued that a difference of seven (7) hours after the occurrence of the incident and the time the deceased died was not accounted for, she argued that a lot would have happened and thus the cause of death should not be visited on her.
29. Pw1 and Pw2 who immediately arrived at the scene said the deceased spoke saying accused stabbed her. She said “Carol has stabbed me”. After a short while she fell unconscious.
30. I have weighed the evidence by the prosecution witnesses and I am satisfied that the deceased died through an unlawful act capable of causing physical injury leading to death caused by the accused.

(iii) Whether mens rea was proved against accused

31. On the third issue, it must be proved beyond reasonable doubt that the deceased met her death as a result of an unlawful act or omission on the part of the accused. Section 206 of the [Penal Code](#) provides that malice aforethought is established if;
- (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 to 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.
32. The accused testified that she quarreled with the deceased over the child under her custody; that the deceased had a knife and as she was struggling to disarm her, a stool tripped them and they fell down; she saw blood on the floor and on checking, saw the deceased was wounded by the knife.
33. In the case of *Rex v Tubere S/O Ochen 1945 12EACA 63* it laid down the guidelines in establishing whether or not certain acts may have been committed with malice aforethought or intention or knowledge that the act or omission will cause the death of a person.
- “...where a deadly weapon is used, the manner in which it is used, the part of the body targeted, the nature of injuries inflicted, the conduct of the accused before, during and after the incident”.
34. The accused used a knife to inflict the wound on the deceased. It is common knowledge that the use of a knife would inflict serious injury or pain on any person.
35. According to the above cited case, the court held that in inferring malice aforethought, the prosecution must establish that in carrying out the unlawful act, the accused acted with full knowledge that the act was highly capable of causing death or grievous harm malice aforethought should be inferred.
36. The deceased died as a result of stab wound inflicted using a knife; evidence adduced point at the accused stabbing the deceased. In her evidence, the accused said it was as a result of self-defence. She said she tried to disarm the deceased who attacked her with a knife and said she was injured during the push and shove with the deceased.
37. I however note that the accused has not demonstrated any injury inflicted on her in the process of the struggle. There is no evidence that point at a struggle between the deceased and accused which would have confirmed acts of self defence by the accused.
38. From the foregoing, I find that the prosecution adduced evidence to prove beyond a reasonable doubt that the accused stabbed the deceased with intention to kill her. I therefore find accused guilty of the offence charged.
39. Final Orders: -
- 1. I hereby find accused guilty of the offence of Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#) and convict her accordingly.
 - 2. Presentence report to be filed before sentence hearing.
 - 3. Right of appeal within 14 days.

JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU THIS 2ND DAY OF MARCH, 2023

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RACHEL NGETICH

JUDGE

In the presence of:

Martin – Court Assistant

Ms Ngesa for State

Ms Mburia holding brief for Kaberia for Accused

Accused – Present

