



**Director of Public Prosecution v Maritwa (Criminal Case
51 of 2017) [2023] KEHC 3533 (KLR) (20 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3533 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE 51 OF 2017
TW CHERERE, J
APRIL 20, 2023**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTION PROSECUTOR

AND

ATHARINA MARITWA ACCUSED

JUDGMENT

1. Atharina Maritwa (Accused) and another already convicted were jointly charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#).

The particulars of the charge are that on July 14, 2017, at Antuanduru location, Tigania East Sublocation, in Tigania East Sub-County within Meru County murdered John Ikirima Manyara alias Makanika

2. Accused denied committing the offence and the prosecution called a total of five witnesses in support of their case.

Prosecution case

3. The prosecution case as stated by Eunice Makena, Philipina Karimi and Pius Kabengi stated that on July 14, 2027 at about 07.00 pm, they separately heard screams from the home of Accused. According to Eunice Makena and Pius Kabengi, someone was shouting “don’t kill don’t kill”. They rushed to the scene arriving at different times and each stated they found Accused and her husband assaulting John Ikirima Manyara alias Makanika (John). Bernard Kainga first received a report concerning John’s assault from Eunice Makena and according to him, Eunice did not tell him that Accused had participated in assaulting John. The witness escorted John to hospital and later received information that John had died. PC Kibet stated that on July 14, 2017, John made a report of assault against Accused and her husband and was referred to hospital where he succumbed to the injuries. Accused and her husband were subsequently arrested and charged.



4. The postmortem report PEXH. 2 filled by Dr. Kibera on July 21, 2017 revealed that John suffered multiple bruises and abrasions on the head, left shoulder with fracture of right frontal bone and flattening of brain on right side of head and had died of acute epidural and subdural; hemorrhage due to blunt force trauma to the head.

Defence Case

5. Accused in her sworn defence denied the offence she stated she arrived home at about 06.30 pm on July 14, 2017 to find both her husband and his brother John injured. She stated that it was her screams that attracted Eunice Makena, Philipina Karimi and Pius Kabengi to the scene. She accused the 3 witnesses of lying that she had assaulted John.

Analysis and determination

6. Section 203 of the [Penal Code](#) under which Accused is charged provide for the offence of murder and the punishment for it. They require that the prosecution prove beyond reasonable doubt that the accused by an unlawful act or omission caused the death of the deceased through malice aforethought.
7. I have considered all the evidence availed in this case as set out above and the issue in question is whether the prosecution has proved the death of the deceased; that Accused caused the death and that he was actuated by malice.

The death of the deceased

8. That Muriuki died was confirmed by way of a postmortem form PEXH. 2 which revealed that John suffered multiple bruises and abrasions on the head, left shoulder with fracture of right frontal bone and flattening of brain on right side of head and had died of acute epidural and subdural; hemorrhage due to blunt force trauma to the head.

Proof that accused person committed the unlawful act which caused the death of the deceased

9. The prosecution has a duty to prove beyond reasonable doubt that the person accused is guilty of the offence charged. (See [Woolmington v DPP](#) 1935 A C 462 and [Bakare v State](#) 1985 2NWLR).
10. I have considered the evidence on record and whereas the investigating officer alleged that John and other prosecution witnesses reported that John had been assaulted by Accused and her husband, he failed to explain why his statement did not contain the name of the Accused if indeed she had been implicated. He similarly failed to explain why it took him over one year to arrest and charge Accused.
11. Additionally, PEXH. 1 which the CPL Kibet alleged was an OB report that he recorded after receiving deceased's report implicating Accused and her husband is in fact not an OB report but a report not by the witness, but by one CPL Osman. The report adds no value to the prosecution case.
12. The evidence by the prosecution witnesses properly evaluated falls in the category of what the Court of Appeal described in [Ndungu Kimanyi v Republic](#) [1979] KLR 282 that:

“The witness in a criminal case upon whose evidence it is proposed to rely should not create an impression in the mind of the court that he/she is not a straightforward person, or raise a suspicion about his trustworthiness, or do (or say) something which indicates that he/she is a person of doubtful integrity, and therefore an unreliable witness which makes it unsafe to accept his evidence.”



13. I have weighed the prosecution case vis a vis the defence and I find that the defence introduces into the mind of the court a doubt that is reasonable considering that the case of the prosecution against Accused cannot be said to have been proved beyond reasonable doubt.

Malice aforethought

14. The prosecution having failed to prove *actus reus*, it would be futile for this court to delve into the issue of malice aforethought.
15. In the end, I have come to the conclusion that both accused is not guilty of the offence of murder contrary to section 203 as read with Section 204 of the [Penal Code](#) and she is hereby acquitted. She shall be set at liberty unless otherwise lawfully held.

DELIVERED AT MERU THIS 20TH DAY OF APRIL 2023

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistant - Kinoti

Accused - Present

For Accused - Mrs. Ntarangwi Advocate

For DPP - Ms. Rita (PC-1)

