



**Director of Public Prosecution v Munene (Criminal Case
E008 of 2021) [2023] KEHC 3537 (KLR) (20 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3537 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE E008 OF 2021
TW CHERERE, J
APRIL 20, 2023**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTION PROSECUTOR

AND

RONY MUNENE ACCUSED

JUDGMENT

1. Roney Munene (Accused) was 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 January 11, 2021 at Ruethwa village, Kothine Location, Imenti South Sub-County within Meru County murdered Patrick Muriuki

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 narrated by Cecilia Kagure Ng'entu is that on on January 10, 2021 at about 11.00 pm, he heard his son Patrick Muriuki (Muriuki) who is Accused's father screaming calling one Koimba. He went to Muriuki's house and found him lying in a pool of blood. She stated that she suspected Accused had killed his father because they frequently used to call about land which Accused was demanding from his father. Edward Nkoroi Ruito who is brother to Muriuki and his wife Jacinta Gakii stated that they heard Muriuki screaming on the material night but did not go to his rescue. It was their evidence that they suspected Accused had killed his father because they did not see him after his father died.



4. After the incident, Cecilia Kagure Ng'entu, her son Edward Nkoroi Ruito and his wife Jacinta Gakii reported the matter to Patrick Muriithi and informed him that they did not know who had killed Muriuki.
5. IP Richard Ribai took over the matter long after Accused was charged. He stated that Accused was implicated by his relatives Cecilia Kagure Ng'entu, her son Edward Nkoroi Ruito and his wife Jacinta Gakii.
6. The postmortem report PEXH. 1 filled by Dr. Mutuma on January 18, 2021 revealed that Muriuki suffered multiple cuts with a fractured skull on the right parietal region and had died of severe head injury following sharp trauma.

Defence Case

7. Accused in his sworn defence denied the offence. He stated that he was at his place of work at Chogoria on the night his father was killed.

Analysis and determination

8. Section 203 and 204 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.
9. 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

10. That Muriuki died was confirmed by way of a postmortem form PEXH. 1 which revealed that he suffered multiple cuts with a fractured skull on the right parietal region and had died of severe head injury following sharp trauma.
Proof that accused person committed the unlawful act which caused the death of the deceased
11. 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).
12. None of the prosecution witnesses saw Accused inflict injuries that led to Muriuki's death. As much as Cecilia Kagure Ng'entu, her son Edward Nkoroi Ruito and his wife Jacinta Gakii attempted to implicate Accused in the murder, their evidence fell short of prove beyond any reasonable doubt none of them having seen Accused commit the murder.
13. In totality, I find that the evidence by the three witnesses that the prosecution proposed to rely did not add any probative value to its case.
14. It is apparent that Accused was suspected of killing his father only because it was alleged he frequently quarreled over land that Accused was demanding from his father. It is trite that suspicion, however strong, cannot provide the basis of inferring guilt which must be proved by evidence beyond reasonable doubt. (See *Sawe v Republic* [2003] KLR 364 and *Kelvin Kiswiri Kyongi v Republic* [2018] eKLR).



15. Further to the foregoing, Accused raised the defence of alibi that he was not at scene of crime. The Supreme Court of Nigeria in the case of *Ozaki & anor v The State* (1990) LCN/2449(SC) held as follows:

“it is settled law that the defence of alibi raised by an accused person is to be proved on a balance of probability” and that for it to be rejected it must be incredible and that the defence of alibi must be weighed against the evidence offered by the prosecution.

16. Our own Court of Appeal in the case of *Kiarie v Republic* [1984] KLR held That:

“An alibi raises a specific defence and an accused person who puts forward an alibi as an answer to a charge does not in law thereby assume any burden of proving that answer and it is sufficient if an alibi introduces into the mind of a court a doubt that is not unreasonable.

17. I have weighed the prosecution case vis a vis the defences of alibi raised by Accused and I have found that the defences was not rebutted and that it introduces into the mind of the court a doubt that is reasonable considering that the case of the prosecution against him cannot be said to have been proved beyond reasonable doubt.

Malice aforethought

18. The prosecution having failed to prove actus reus', it would be futile for this court to delve into the issue of malice aforethought.

19. In the end, I have come to the conclusion that both Accused are Not Guilty of the offence of murder Contrary to section 203 as read with section 204 of the [Penal Code](#) and he is hereby acquitted. He 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 - Mr. Muchoma Advocate

For DPP - Ms. Rita (PC-1)

