



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Mang'eni (Criminal Case 49 of 2014)
[2023] KEHC 18315 (KLR) (2 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 18315 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL CASE 49 OF 2014**

WM MUSYOKA, J

JUNE 2, 2023

BETWEEN

REPUBLIC PROSECUTION

AND

ROBAI BUYOMBE MANG'ENI ACCUSED

JUDGMENT

1. 9 witnesses testified in this matter. 1 of them testified to have had witnessed the assault on the deceased. PW1, Jorum Shakava Shirandula, did not witness the assault. He had just retired to bed, when he heard the voice of the accused outside, warning dire consequences on a person or persons who were ruining her marriage. He later heard screams from the direction of the home of the deceased. He rushed to that home, and found the deceased dead, and was told that he had been stabbed by the accused. PW2, Elizabeth Ndumbu, was a daughter of the deceased. She testified that she and her siblings were shelling maize, then the deceased came home, and the accused served him food, and while he was eating the accused picked a knife and stabbed him on the chest. She rushed out and informed her grandmother. PW3, Edith Nasimiyu Sirengo, was the mother of the deceased, to whom PW2 informed of the stabbing incident.
2. PW4, Dr Wambasi Mutoro, presented the post-mortem report, with regard to the autopsy done on the body of the deceased, by another doctor. There were 3 penetrating wounds on the chest, and the cause of death was said to be cardio-pulmonary arrest due to cardiogenic shock, secondary to internal bleeding and penetrating injury, due to a sharp object. PW5, Fredrick Musee Kuranja, was a cousin of the deceased. He heard screams from the home of the deceased, and upon rushing to the scene, he found the deceased lying dead with chest injuries. PW6, Sammy Mukwana Muzee, the father of the deceased, he identified the body for post-mortem purposes. PW7, Erastus Luvembe Mare, was a brother of the deceased, he too identified the body for autopsy purposes. PW8, Benson Ngaira Kutima, a village elder, the report of the incident was made to him, and he called the police. PW9, No 43924 Corporal Ngei Muindi, was the investigating officer.



3. I put the accused on her defence. She denied assaulting the deceased. She testified that she heard him groaning outside the house, when she stepped outside, she found him with blood on his chest. She alerted relatives, who attempted first aid, but he died. A crowd formed thereafter, who beat her, accusing her of having caused his death. She said that she had not had disagreements with him. She said that PW2 lied to the court, as she was asleep at the time of the incident.
4. The principal elements of murder are proof of the death, the cause of it, the role of the accused person in the causation, and whether, if the accused caused the death, it was with malice aforethought.
5. On whether the deceased died, I have the evidence of PW1, PW2, PW3 and PW5. They all saw the body of the deceased shortly after he died. PW6 and PW7 identified the body for post mortem purposes. PW4 produced the post-mortem report. The cause of death was said to be cardiopulmonary arrest due to haemorrhagic shock due to internal bleeding, due to penetrating cut wound, using a sharp object. The cause of death was linked to the accused, by PW2, who testified to have been present, when the accused took a kitchen knife, that PW2 and the other children were using to shell maize, and stabbed the deceased with it, on the chest. The accused denied killing the deceased. There was eyewitness evidence. PW2 said that after the incident she reported to PW3, her grandmother, who corroborated it.
6. The remaining issue for determination is whether the act by the accused was with malice aforethought.
7. 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.”
8. Under section 206, malice aforethought is to be inferred where there is 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 lawful custody of a person, and, in the process, a death is caused.
 9. The very grave injuries that the deceased sustained, on the chest, which houses such vital organs as the lungs and heart, said to have been caused by stabbing with a knife or sharp object, could only have been caused by a person who had an intention to kill him or to cause him grievous harm, both of which are elements of malice aforethought.



10. In view of everything stated above, I do hereby, find the accused herein, Robai Buyombe Mang'eni, guilty of the offence of the murder of Alex Ndumbu Mzee, 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 Kakamega 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 to file a report thereon within 30 days.

**JUDGMENT DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS
2ND DAY OF JUNE, 2023**

WM MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Appearances

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

Ms. Andia, Advocate for the accused person.

