



**Republic v Mukuna (Criminal Case 46 of 2021)  
[2023] KEHC 20594 (KLR) (21 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20594 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CRIMINAL CASE 46 OF 2021**

**WM MUSYOKA, J  
JULY 21, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**JUDITH IMINZA MUKUNA ..... ACCUSED**

**JUDGMENT**

1. The accused person herein, Judith Iminza Mukuna, is charged with murder, contrary to section 203, as read with section 204, of the [Penal Code](#), Cap 63, Laws of Kenya, the particulars being that on April 9, 2018, at Luanda township, Luanda Sub-County, within Vihiga County, she murdered Erick Kwach Morris.
2. 8 witnesses testified in this matter. This was a case of food poisoning. PW1, Wycliffe Adebe Nganyi, testified that he was staying in the same house with the deceased, when the accused came, cooked for them, and left before they had eaten the food she had cooked. Both of them were affected by the food cooked by the accused, with the deceased dying, and PW1 ending up in hospital. PW2, Beatrice Rebecca Munala, was the mother of the deceased. When she could not reach him on mobile phone, she went to his house, and found him dead. PW3, Andrew David Munala, was an uncle of the deceased, and a brother of PW2. PW2 informed him of the death. PW4, Margaret Kivandi Ayuya, a village elder, heard the accused and her sister, Juliet Andeyo, fighting and separated them. PW5, Jackson Kambula Shihulu, was a boda boda operator. He took the accused to a stage at Luanda, and heard her saying that she was going to Bondo. 2 or 3 days later, she called him to ask him to ferry her from Luanda. PW6, Isaya Jackson Kadila, was another boda boda operator, who took the accused home on his motorcycle.
3. PW7, Juliet Andeyo Mukuna, was a stepsister of the accused, who testified that she and the accused fought over the deceased. She stated that she saw the accused and the deceased together on March 23, 2018, when the deceased gave money for fare to the accused. PW8, No 110813 Police Constable Abdi Jillo, took over investigation of the matter from the initial investigator. PW9, Dr. Dixon Mchana



Mwaludindi, was the pathologist who conducted post-mortem on the body of the deceased. He opined that the cause of death was due to suspected chemical poisoning. He took samples from the body for further analysis. He explained that poisoning causes heart failure, which he stated was the cause of the death of the deceased. PW10, Richard Kimutai, was an analyst from the Government Chemist. He had been presented with cooked food in 2 sufurias and a plate, and a greyish powder. Upon analysis, he established that the greyish powder was a pesticide, and traces of it were found in the cooked food in the plate and 1 of the sufurias. He stated that he was not furnished with anybody parts for toxicology. PW11, No 23556 Chief Inspector of Police Albert Chebii, conducted the identification parades, from which PW1 picked the accused.

4. I put the accused on her defence. She denied killing the deceased. She testified that on 7<sup>th</sup> April 2018, a friend of her mother asked to be assisted with farm work, and she volunteered to do it. She went there on 8<sup>th</sup> April 2018. When she got home at 4.00 PM, she heard screams from the home of the deceased. She rushed there, and heard that he had died. She said that in March 2018, she was not at home, but in Nairobi.
5. 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.
6. On whether the deceased died, I have the evidence of PW2 and PW3. They saw the body of the deceased lying dead in his house. PW2 and PW3 identified the body, to PW9, for post mortem purposes. PW9 conducted autopsy on the body of the deceased, and produced the post-mortem report. The cause of death was said to be due to heart failure, on account of suspected chemical poisoning. PW10 detected traces of a poisonous pesticide in the cooked food in one of the sufurias and plate that were given to him by the police for analysis. PW1 directly linked the cause of death to the accused.
7. There is no dispute that the deceased died of chemical poisoning. What is in contention is who did it. PW1 identified the accused as the person who came to their house, and cooked for them, and left before they could eat the food she had prepared. When they ate the food, after she left, they became sick, with the deceased eventually dying, and PW1 in hospital. The accused contested that. She denied cooking the food, and even visiting the deceased that fateful evening. In her defence, she said she was out of the area at the time of the incident, and that she only came back after the deceased had died. She pointed a finger at PW7, her stepsister. An identification parade was carried out, where both the accused and PW7 featured, and PW1 picked the accused, as the woman who visited them, and cooked the food, which caused the death of the deceased. The accused challenged the conduct of the parade, but from the material and the narrations, I find no substance in her contest. She was positively identified as the person that visited the deceased and PW1, and cooked the food that made them ill, leading to the death of the deceased. That food was presented to PW10, for chemical analysis, who found traces of a deadly pesticide.
8. Did the accused have malice aforethought? A person who puts a deadly poison in food, and serves the food to another, can only intend that the poison would kill the other. A killing through a deliberate act of putting poison in food, intended to be eaten by a particular person, clearly points to cold-blooded premeditated murder.
9. There are inconsistencies in the testimonies about the dates. PW1 stated that the incident happened on March 8, 2018, while PW3 talked of August 8, 2018. The dates given by the boda boda operators also reflect inconsistency. I am not persuaded that the said inconsistencies are material. PW2 lost a son, and the dates given by her must be the accurate ones. The police and medical evidence clearly indicate that these events happened in April 2018.



10. In view of everything stated above, I do, hereby, find the accused herein, Judith Iminza Mukuna, guilty of the offence of the murder of Erick Kwach Morris, contrary to section 203 of the *Penal Code*, as read with section 204 thereof, and I convict her accordingly, under section 322 of the *Criminal Procedure Code*, Cap. 75, Laws of Kenya.
11. For the purpose of sentencing, I direct the Vihiga County Director of Probation and Aftercare Services to look into the antecedents of the accused, interview the family of the victim and the community, and file a report thereafter, within 30 days. The matter shall be mentioned thereafter, for compliance. The sentencing shall be done by my successor or successors at Vihiga.

**JUDGMENT DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS  
21<sup>ST</sup> DAY OF JULY 2023**

**WM MUSYOKA**

**JUDGE**

**Mr. Erick Zalo, Court Assistant**

**Appearances**

Mr. Chigiti, instructed by the Director of Public Prosecutions, for the Republic.

Mr. Chitwa, Advocate for the accused person.

