



**Republic v Mwangi & 2 others (Criminal Case 9 of 2018)
[2023] KEHC 21061 (KLR) (20 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 21061 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CRIMINAL CASE 9 OF 2018
SM GITHINJI, J
JULY 20, 2023**

BETWEEN

REPUBLIC RESPONDENT

AND

FRIDAH NYAMBURA MWANGI 1ST ACCUSED

JOSEPH MUNGAI WAMIRO 2ND ACCUSED

FRANCIS MIGWI NGURE 3RD ACCUSED

JUDGMENT

1. Initially there were three accused persons in this matter namely Fridah Nyambura Mwangi; Joseph Mungai Wamiro and Francis Migwi Ngure. They were charged with the offence of murder, contrary to section 203 as read with section 204 of the [Penal Code](#).

The particulars of this offence are that on the 10th day of April, 2018 at Kibaoni Center at about 22.00hours in Lamu West Sub-County within Lamu County, the three murdered Simon Ndung'u Gichimu.

The case was heard and after the prosecution closed its case and the accused were placed on their defence, the first accused plea bargained and was dealt with. The judgment herein regards the 2nd and 3rd accused persons only.

2. The prosecution case is briefly that the deceased in this case and the first accused person used to be lovers but later parted ways. The 1st accused person then got into a love relationship with the 2nd accused person. The 3rd accused was a friend to the deceased.

On April 10, 2018 in the evening, the deceased herein and his friend the 3rd accused person went to Neptune Bar in Kibaoni Town for a drink. They took "mkoma" beer. The 1st accused and her lover, the 2nd accused in this case were also in the said pub taking beer. The deceased saw them and quarreled



them. He alleged the 2nd accused owed him money, Kshs 1,350/= of which he had not paid and had also taken his lover, the 1st accused in this case. Out of that he quarreled the 2nd accused. The 1st accused told the 2nd accused that they should leave. The two left together. Outside the deceased pursued them. The 3rd accused tried to cool him down but in vain. He quarreled the 2nd accused and the 1st accused and a fight ensued between them. Pw-2 heard them quarrelling. It was at about 10.00Pm. She got out of her house and tried to stop them. They were drunk and were fighting using their fists. When they stopped fighting Pw-2 got back to her house. The quarrel was near the 1st accused house. She got into the house and took a knife. She stabbed the deceased with it once on the left side of the chest. The deceased cried out saying, “ woi, you have killed me, you have killed me!” Pw-2 was attracted back to the scene by the said cries. She found the three present and the deceased on the ground, wounded and crying. Pw-2 and Pw-3 vanished. Pw-3 and 1st accused remained. They sought help from KDF officers. They arrived and administered first aid on him. They then rushed him to Mpeketoni Sub-County Hospital. He met Pw-2 there who had visited her husband in the said hospital and narrated to her what had happened to him. He then died. The postmortem was conducted on April 16, 2018. The doctor concluded that the cause of death was internal organ damage with internal bleeding; Secondary to stab wound by a sharp object.

3. Pw-4 investigated the case. He recovered the knife of which was blood stained. The deceased hair and nail was extracted and taken to government chemist. They were examined by Pw-5 who found that their DNA matched. The blood stains on the recovered knife were those of the deceased, showing the knife was the murder weapon. The three suspects who had been arrested were charged with the offence. As indicated earlier through a plea-bargaining process, the 1st accused pleaded guilty and was dealt with. The 2nd and 3rd accused proceeded and offered their defences.

The defence case does not defer from the prosecution case in the essential details. It reveals the 2nd accused was a lover to 1st accused and 3rd accused was a friend to the deceased. The deceased and the 3rd accused went to Neptune Bar to take beer on the material night. The 1st and 2nd accused were there taking beer. When the deceased spotted them he quarreled the 2nd accused person. The 3rd accused tried to cool down the 3rd accused. The 1st accused said she was no longer interested in the deceased. She went home and got back. She urged the 2nd accused to leave the pub in her company. The deceased told them they were going nowhere. They went outside the pub and the deceased pursued them there. He quarreled 2nd accused and fought him. 3rd accused went to rescue him. He managed and urged them to go home. The 2nd accused wanted to part from 1st accused out of the said quarrel. The 1st accused got annoyed with the deceased. She got a knife from her house and stabbed the deceased with it once.

4. The facts which were read to the 1st accused who pleaded guilty, reveals that the deceased had pursued the 1st accused and 2nd accused in the house of 1st accused where they had gone after the quarrel at the pub. The 3rd accused was there trying to separate them after they engaged in a physical fight. The 1st accused got a knife and stabbed the deceased once with it, leading to his death.

Section 203 of the *Penal Code*, under which the accused are charged, defines the offence of murder and reveals the ingredients which requires proof beyond reasonable doubt. These are; -

1. Proof of death of the deceased.
2. Establish the cause of death.
3. Establish that death was as a result of unlawful act or omission by the accused persons.
4. The unlawful act or omission was with malice aforethought.



5. The evidence in the entire prosecution case shows that the deceased was the aggressor. He attacked the 1st and 2nd accused persons allegedly because 2nd accused owed him some money and had also taken his lover, the 1st accused person. All the time the 1st and 2nd accused persons tried to get out of the trouble by getting away from the deceased, but the deceased kept on pursuing them. The 3rd accused person is even a friend to the deceased and was at Neptune Pub with him for fun. The role he played is to try to persuade the deceased from quarrelling the 1st and 2nd accused persons. The evidence does not reveal that the 2nd and 3rd accused persons did anything unlawful or omitted to do something they are obliged to, causing the death of the deceased. There is even no reliable evidence that they engaged in a physical quarrel with him. The deceased died out of a single stab wound on the left side of his chest of which was inflicted solely by the 1st accused person. The 1st accused owned it up when she pleaded guilty to the offence. The prosecution evidence does not therefore connect the accused herein (2nd and 3rd) with the death of the deceased. They would have been of better use as prosecution witnesses. Nothing shows they had intention to kill the deceased or acted in concert with the 1st accused person. They just happened to be present and their mere presence does not amount to commission of the offence. The prosecution case therefore fails to establish the 3rd and 4th aforementioned ingredients of the offence of murder against the two accused persons. For the said reasons I do find them innocent and are accordingly acquitted of the offence. They are set free unless otherwise lawfully held.

JUDGMENT FOR GARSEN DATED, SIGNED AND DELIVERED AT MALINDI THIS 20TH DAY OF JULY, 2023

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S.M. GITHINJI

JUDGE

In the Presence of; -

Ms Mkongo for the state

Mr Gekanana for the 2nd Accused - Miss Mona is holding brief for Mr Gekanana for 2nd Accused.

Ms Emukule for the 3rd Accused Person

