



**Republic v Muturi (Criminal Case 20 of 2019)
[2023] KEHC 20307 (KLR) (6 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20307 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE 20 OF 2019**

A. ONG'INJO, J

JULY 6, 2023

BETWEEN

REPUBLIC PROSECUTOR

AND

FRANCIS MURIMI MUTURI ACCUSED

JUDGMENT

1. The accused Francis Murimi Muturi is charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*.
2. The particulars are that Francis Murimi Muturi on the September 4, 2019 at Mushomoroni Area in Kisauni sub-county within Mombasa county murdered Beatrice Wambui Amos.
3. The evidence of PW 1, PW 2, PW 3 & PW 4 was to the effect that they were neighbours to the accused and his wife the deceased. That on September 4, 2019 at night they were preparing to go to sleep when the accused and his wife started quarreling thus disrupting peace in the neighbourhood. That neighbours got out and restrained them from quarrelling.
4. PW 1 said that the accused and his wife had 2 children who were crying and he took them to his house as accused entered the house to sleep but the deceased remained outside.
5. That at about 1.00 am the accused person knocked at immediate neighbours houses reported the wife had stabbed him and also stabbed herself to death. They said the accused was bleeding from the chest.
6. PW1 called police and they came to scene removed the deceased body to the mortuary and also took the accused to hospital. PW 1 also said that when he got out at night to go for short-call he found the deceased still sleeping outside and the accused was inside the house. He said they didn't know what happened when they were asleep. PW 1 said he heard the accused quarrel over money food and children.



7. PW2 said the wife of the accused – the deceased was restless but he could not tell if she was drunk. PW 2 also said he didn't know what happened inside the house.
8. PW3 said that accused and the deceased quarreled because the deceased was unable to take care of the children. He said the deceased showed signs of drunkardness. He said the accused was also drunk. PW 3 also said that when they came out the accused 2 children a girl and boy were crying and the accused was seated on the stairs crying and bleeding from the chest.
9. PW4 said when they were woken up and he found the accused bleeding from the chest profusely he checked inside the accused persons one roomed house and saw the deceased was lying dead and that there was no sign of struggle in the house. PW 4 said the accused and deceased had been their neighbours for 3 months and they quarreled frequently but didn't fight. He said he didn't know what they were quarrelling about since he was not their immediate neighbor.
10. PW5 was affirmed and she said the mother was cooking when the accused took a knife and cut her on the throat and she started bleeding. That the accused then cut himself on the throat. She said when police came the accused was taken to hospital and the mother body was taken by police. PW 5 said the house had blood. She said they spent the night in a neighbours house. She said there was light in the house when the accused beat the deceased. She said she didn't know why the dad beat their mother when she was cooking. She said in cross examination the deceased was cooking rice and meat. She said both parents used to go to work but she didn't know what work they used to do.
11. She said that her mother returned home earlier than the father and she was talking to them loudly. She said her mother had not taken alcohol on the material day and she didn't know if her mum used to drink alcohol. She said she cannot remember what the father told her mother when he returned as they were outside and the mother was inside. She said she ate the food that their mother had cooked at lunch time then went to play. She said she saw the accused seated outside cutting himself with the orange knife. She said she didn't go into the house after police came.
12. PW6 Irine Waringa Government Analyst produced a report in which she found that blood stains on the knife, yellow blouse & bedsheet all tested positive for human blood and blood stains on knife did generate profile that did not match that of the deceased.
13. PW7 the Investigating Officer produced the Post-Mortem Report by consent of the defence counsel. It was established that the deceased died due to haemorrhagic shock due to cut wound on the esophagus walls. PW 7 CPL Kadir went to scene of murder in Machafuko area in company of PC Omar on September 5, 2019 at 01.30 am and found officers from Mpambere police station. They found body of deceased lying in a pool of blood having kitchen knife on right hand. PW 7 processed scene. He said accused was taken to hospital with some injuries.
14. PW7 testified that the accused and the deceased quarreled in the night and were stopped by neighbours and accused entered the house while the deceased remained outside. That later in the night neighbours were woken up by the accused who claimed that his wife had stabbed him. PW7 said the accused and deceased daughter 5 years old said she witnessed the accused stab the mother on the neck and he also stabbed himself. PW7 said accused had a wound in the stomach. PW7 produced the knife as an exhibit-2 bedsheet – EXP 3. PW7 said that after neighbours had resolved the quarrel between the accused & the deceased the accused entered the house with the children and the deceased remained outside.
15. When placed on defence the accused said in sworn statement that he was a tuktuk rider the deceased was his wife. He said that on September 4, 2019 when he returned from work at 7.00pm his neighbor Mama Ronnery told him the deceased had taken her phone to call accused but he said she had not



- called him. That Mama Ronney told him his wife was drunk and might lose her phone. He said that their daughter Mercy was playing outside while Simon had gone with the deceased.
16. That the deceased called & informed him she was at Mangwe (palm wine den) and that he should go for her. That he told her to return the phone. That at 8.00pm he decided to go for her using tuktuk. That on the way home the deceased complained she had lost money. He said the deceased was totally drunk. That on arrival home the neighbours whose phone the deceased had taken told him the deceased had been away the whole day and they are the ones who gave food to Mercy.
 17. That the deceased started insulting the neighbor who had given her phone and refused to enter the house. That he entered the house with the 2 children and told the deceased it would be necessary that they separate in order for her to change. Accused said he had planned to move to Likoni the following day. That when he told the deceased he would move out she said, “tutaona asubuhi kama itafika”.
 18. That accused took her comments lightly as she was used to creating trouble. That accused put the children to sleep and started watching a movie on TV. That the deceased stayed outside and even slept and he covered her with a bed sheet. That he slept on the seat and towards 2.00am he felt a sharp pain on his abdomen and he fell down and that is when he saw the deceased kneeling besides him asking for pad on.
 19. He said light from TV made him to identify the deceased. That the deceased was holding a knife on her hand and saying “God forgive me”. That the door was open and he crawled out and went to his neighbours house. That Mama Ronney opened and on seeing him bleeding she screamed and returned to the house. That Baba Ronney came out and saw him and took him near the stairs. That when he got out he didn’t know what was happening in the house.
 20. That police arrived at scene and advised that he should be taken to hospital. That he was taken to Jocham for 1st accused and then taken to Coast General Hospital where he learnt his wife had died. He said the knife produced in court is the one he saw his wife holding while kneeling besides him. Accused said that there was a lady who visited and found the deceased had gone for 3 days drinking spree and she informed him the deceased had killed someone in Nakuru and she escaped.
 21. Accused also said that there was a time the deceased abandoned 2 months old child as he went drinking and he reported at Nyali Police Station and they were referred to Children’s Office and the deceased said she wanted to go home. Accused said Mercy and Simon woke up when police came to scene and he was already outside that Mercy didn’t see him stab the deceased.
 22. The accused denied having send a text message to the mother of the deceased on April 18, 2019. He said that on September 4, 2019 he sends a text message to his mother-in-law saying “Wambui ameanza vituko tena”. He had admitted Mercy Wanja was in the house on the material night. He said the person who told her the deceased had killed someone in Njoro is not a witness and the OB No for report he made to police is not in court. He said his treatment notes were in prison.

Accused Person’s Written Submissions

23. The accused submitted that the evidence of the prosecution turns on the testimony of PW5 who is the alleged eye witness to the events of the material day. That however, it is clear from her testimony that she could not recount clearly as to the events leading up to the death of the deceased. The accused person stated that according to her testimony, the deceased was cooking when the accused person picked up the kitchen knife and stabbed her before turning on himself. That however, the evidence on record indicates that a quarrel had ensued between the accused person and the deceased wife prompting neighbours to calm the two before everyone retreated to his room. That further, the deceased wife



was reluctant and choosing to remain outside and sat along the corridor. That evidently, PW1, Rashid Kigunda Hamza, in his statement confirmed that at around 11 pm, he went for a short call and noticed the deceased wife sleeping along the corridor. That therefore, the evidence of PW5, Mercy Wanja, was insufficient and fell short of the threshold required in criminal cases, that is proof beyond any reasonable doubt and as such, it is unsafe to accept her evidence.

24. The accused person contended that PW7 produced PExh-5, a Government Analyst Report dated March 12, 2020 which was founded on the exhibit memo dated September 24, 2019 and produced as PExh-4. That the said exhibit memo was purposely to ascertain if the blood stains contained on the exhibit marked 'A-blood stained yellow blouse', 'C-blood stained bedsheet' and 'D-blood stained kitchen knife with yellow handle' matched the blood in the test tube containing blood sample marked 'B'. The accused person stated that in the said report, the Government Analyst concluded that the blood stained knife with yellow handle generated a female DNA profile which did not match with the reference sample blood marked 'B'. The accused person therefore concluded that it was clear the deceased wife indeed inflicted the injuries on herself, the reason why the blood stained knife with a yellow handle generated a female DNA.
25. The accused person relied on the case of Nyamira criminal case No 14 of 2020, *Republic v Agnes Nyamoita Gesora* (2021) eKLR where the learned judge E. N. Maina in dealing with insufficient evidence in the prosecution case held that while there may be strong suspicion that the accused killed the deceased, it is trite that suspicion no matter how strong cannot be basis for a conviction.
26. On malice aforethought, the accused relied on Nyeri criminal appeal No 375 of 2011, *Joseph Kimani Njau v Republic* (2014) eKLR where the Court of Appeal concurred with *Nzuki v Republic* (1983) KLR 171. The accused also cited *Isaac Kimathi Kanuachobi v R* (Nyeri) criminal appeal No 96 of 2007 (UR) and contended that there is no evidence on record indicating that the accused person had any intentions of killing the deceased wife whether express, implied and/or constructive. That the prosecution witnesses corroborated the defence evidence to the extent that when the quarrel between the accused person and the deceased wife ensued, they promptly calmed them down and everyone including the accused person retreated to their room. That however, the deceased wife refused and proceeded to sit along the corridor alone her intentions unclear. That therefore, there was no manifestation of malice aforethought and there was no evidence that the accused person planned to murder the deceased.

Analysis and Determination

27. In consideration of the evidence of 7 prosecution witnesses and the accused person's sworn statement as well as the accused person's submissions filed on May 15, 2023, this court is to determine whether the ingredients of the offence of murder as provided for under section 203 of the *Penal Code* chapter 63 of the Laws of Kenya have been proved beyond reasonable doubt by the prosecution.
28. Section 203 of the *Penal Code* chapter 63 of the Laws of Kenya under which the accused person was charged provides as follows: -

'Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.'
29. The said provision creates elements of the offence of murder that must be proved by the prosecution beyond reasonable doubt as held in the case of *Anthony Ndegwa Ngari v Republic* [2014] eKLR to include: -
 - i. The fact of death



- ii. That the death was caused by an unlawful act or omission;
- iii. That the accused person directly or indirectly participated in the commission of the unlawful act and/or omission; and
- iv. That there was malice aforethought.

The fact of death

30. The fact that Beatrice Amos died on September 4, 2019 is not in dispute. Both the prosecution witnesses and the accused person have confirmed the fact of death.

Whether the death was caused by an unlawful act or omission and whether the unlawful act was committed by the accused

31. The investigating officer testified that the deceased had a stab wound on the oesophagus and the doctor who prepared the postmortem report noted a penetrating cut wound on the middle of oesophageal walls with hemorrhage and blood clots. According to the accused, the stab wound was inflicted by the deceased person herself after she had allegedly stabbed the accused person in the stomach. The accused alleged that he was asleep on the seat when he felt a sharp pain in the abdomen and he fell down and that is when he saw the deceased kneeling beside him and asking to be forgiven as she was holding a knife in her hand. He said that the TV was on that the light on the TV made him to identify the deceased.
32. PW5, Mercy Wanja, the 5 years old daughter of the accused and the deceased however said that she saw the accused cut her mother in the neck and also started cutting himself. Although the accused alleged that he did not know what happened with the wife when he got out of the house, PW1 said that he told them that the wife had stabbed him and stabbed herself. PW1 said that he found PW5 and the brother crying and he took them to his house. PW2 confirmed that after they had intervened in the deceased and accused person's quarrel, the accused entered the house with the children leaving the deceased outside. PW3 said that when he came out, he found the children crying but he did not talk to them.
33. PW7, the investigating officer, said that he found the deceased lying in a pool of blood while holding a kitchen knife in her right hand. The accused said that PW5 was asleep and could therefore not have seen what happened. PW5 however said that she witnessed the accused stabbing her mother and cutting himself. Considering that the accused confirmed that there was light from the TV, this court finds that the evidence of the minor that she witnessed the offence was credible. This court also finds that it was not possible for the deceased to have cut herself then held onto the knife and the accused person's version of what transpired cannot be true. It is the accused person who inflicted the fatal injuries on the deceased and then went out to lie to the neighbours that he had been stabbed.
34. In defence the accused alleged that his wife had gone on a drinking spree after taking Mama Ronney's phone and that when he went to bring her from the drinking den using a tuktuk and on return, they started quarrelling as the deceased was insulting Mama Ronney. He also said that the deceased threatened him saying "tutaona kama asubuhi tafika". These allegations were never raised with the prosecution witnesses PW1 to PW4 who were the accused person's neighbours. The truth of the allegations was therefore not interrogated and cannot be relied on to challenge the prosecution's evidence.

Whether there was malice aforethought

35. Malice on the part of the accused person is evidenced by the fact that he stabbed a vital part of the deceased's body and then placed the knife in her right hand to look like she had stabbed herself after



allegedly stabbing him. The evidence of their daughter was however contrary to his allegations that the deceased killed herself. The accused person's intention was to eliminate the deceased.

36. This court finds that all the elements of the offence of murder have been proved against the accused person by the prosecution witnesses and he is therefore found guilty and convicted in accordance with section 322 of the *Criminal Procedure Code*.

Dated, signed and delivered in Open Court/online through MS TEAMS,

this 6th day of July 2023

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of: -

Bebora- Court Assistant

Mr. Ngiri for the State

Mr. Kiti Advocate for the Accused Person

Accused present in person

HON. LADY JUSTICE A. ONG'INJO

JUDGE

Mr. Kiti Advocate: I pray for a date when mitigation can be given. I pray for a copy of the judgment.

Mr. Ngiri: We don't have previous records. We pray for a copy of the judgment.

Orders: Mention on 20.7.2023 for Victim Impact Statement, mitigation and sentence. Accused placed in custody.

Copy of judgment to be supplied to defence and prosecution.

HON. LADY JUSTICE A. ONG'INJO

JUDGE

PARA 6.

7.2023

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