



**Republic v Muhoria (Criminal Case 2 of 2016)
[2023] KEHC 19486 (KLR) (5 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 19486 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 2 OF 2016
HK CHEMITEI, J
JULY 5, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

ASHTON WACHIRA MUHORIA ACCUSED

JUDGMENT

1. The accused herein 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 were that on the January 17, 2016 at Free hold area within Nakuru county murdered Moreen Wanjiku alias Wahu.
2. The accused denied the offence and the prosecution called several witnesses to prove its case and their evidence can be summarised as hereunder.
3. PW1 Corporal Silas Wanyala attached to Bondeni police station testified that on the material day around 2am together with his colleagues were on a patrol within Freehold area when they noticed a tuktuk parked next to Jesus Witness church. They approached it and they found the accused who was seated inside and on the driver's side. On checking the passenger's seat they saw a lady who was lying there. Upon checking again, they found that she was already dead.
4. They arrested the accused and took him to the police station. The scene of crime officers came to the scene and took sets of photographs and the body was taken to the mortuary. He said that the registration number of the tuktuk was KTWA 285E.
5. He said in cross examination that the accused told them that he was relaxing with the lady and it appeared that there were no struggles.
6. PW2 PC Patrick Maingi was also with pw1 and he gave the same version of evidence. He however added that when they questioned the accused he attempted to run away but they apprehended him.



7. On cross examination he said that the accused told them that the lady had been left behind by his boyfriend. There was nobody in the church at that particular time.
8. PW3 Peris Achieng testified that she knew the deceased who was her friend and that she went to identify the body at the mortuary.
9. When cross examined she said that she was a commercial sex worker and that she had known the deceased for 8 months. That she knew the deceased as there had been spate of deaths involving commercial sex workers.
10. PW4 PC Caroline Murunga was also among the police officers doing patrol that particular night and she gave similar evidence like her colleagues above. She said that she did not know the accused before this day.
11. When cross examined she said that they found the accused at the tuktuk and he did not appear drunk and that he told them that he had just dropped some other customers. She said that at the scene they found a pair of shoes, a scarf and a mavin which she was able to identify.
12. PW5 PC George Satiya was the investigating officer in the matter having been instructed by the OCS to commence investigations that night. He said that after arresting the accused he commenced investigations and the accused confessed that he strangled the deceased using her scarf as she had stolen her laptop. He said that he visited the accused home and saw a sign of a meal having been prepared.
13. The witnesses who were his neighbours said that they occasionally see the accused with the deceased. The witness recorded statements from other witnesses and preferred charges against the accused. He denied they forcefully extracted statement from the accused.
14. PW6 Dr. Titus Ngulungu produced the post mortem report on behalf of Dr. George Biketi who opined that the cause of death was strangulation.
15. The evidence of PW7 chief inspector Paul Omolo was later subjected to trial within a trial and the court disallowed it in its ruling. The court found that the confession allegedly made by the deceased did not comply with the law.
16. PW8 Chief Inspector John Songa did take the photographs at the scene and he produced all of them as part of his evidence. When cross examine over the same he said that he was a forensic investigator and therefore fully qualified.
17. When placed on his defence the accused gave unsworn evidence and testified that he was a tuktuk operator and on the material night around 2.30 to 3.30 am he was ferrying customers at platinum club. That he carried three ladies and took one to KANU street and the other two he took them to Free area.
18. At the Daraja area he was told to wait for the fare as she was to get it from the house. She took a while and he became uncomfortable and he sent the other passenger. She was however unable to go as she looked drunk and that she did not wake up. The police patrol passing the area arrived and questioned him.
19. He went on to tell the police that the customer was not responding. He was told to get out of the tuktuk and was subsequently arrested. He was told at the station that the lady who had boarded the tuktuk had died.
20. The court thereafter directed the parties to file written submissions which they have complied.
21. The learned state counsel submitted that the prosecution had proved its case beyond any shadow of doubt and that it was the accused who was found with the deceased in his own tuktuk.



22. The state wondered at what point was the deceased strangled without the knowledge of the accused. He said that the defence he offered was purely an afterthought.
23. The accused counsel on the other hand denied that the state had proved its case beyond reasonable doubt as no eye witness was called at all. He said that the evidence before the court was purely circumstantial.
24. He submitted that there was no evidence of strangulation and that what the assailant did was smothering the deceased at the back. He said that there was no DNA analysis done to demonstrate that the accused had any linkage with the offence. He prayed that his client be set free.

Analysis and determination

25. The court has perused the proceedings herein as well as the parties' submissions. What is not disputed is that the deceased was found dead inside the tuktuk driven and owned by the accused. He did not deny at all the evidence adduced by the prosecution.
26. The million-dollar question is how the deceased found herself dead inside the said tuktuk. The only person who had an explanation was the accused. The police were simply undertaking their normal patrol and it was a coincidence that they bumped into the scene.
27. The deceased died of strangulation and it is not plausible as suggested by the defence in its submission that whoever the accused had ferried that night with the deceased must have smothered her. This court finds the unsworn evidence by the accused of no probative value at all.
28. Even if one was to believe the line taken by the defence the accused would have heard or realised a struggle inside the tuktuk.
29. It is true that there was no eye witness to the incident but circumstantially what was presented before court clearly and irresistibly points to the accused guilt. He cannot feign ignorance by stating that he simply found the deceased unable to respond and he realised that she was dead.
30. This court is therefore satisfied that it was the deceased who strangled the deceased to death whether at the scene or elsewhere. Although the state did not call the neighbours whom the investigating officer claimed that they had seen the deceased at the accused home I am convinced that the accused had a close relationship with the deceased otherwise what will he be doing in those early hours of the morning with a dead body.
31. In the premises I find that the prosecution has proved its case against the accused beyond any shadow of doubt and he is hereby convicted under the provisions of Section 203 of the *Penal code* as read with section 215 of the *Criminal procedure code*.

DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 5TH DAY OF JULY 2023.

H. K. CHEMITEI

JUDGE

