



**Republic v Mugoro (Criminal Case 3 of 2014)  
[2023] KEHC 22287 (KLR) (20 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 22287 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CRIMINAL CASE 3 OF 2014  
J WAKIAGA, J  
SEPTEMBER 20, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**FRANCIS MURIGI MUGORO ..... ACCUSED**

**JUDGMENT**

1. The accused was charged with the offence of murder Contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of which was that on the 10<sup>th</sup> day of July 2009 at Milimani area in Makuyu Within Muranga County murdered Hannah Wangari.
2. He pleaded not guilty to the charges and on December 3, 2018, his trial commenced before Kimondo J who recorded the evidence of all ten prosecution witnesses and by a ruling dated June 7, 2022 placed the accused on his defence. On February 22, 2023 having complied with the provisions of Section 200 of CPC the accused tendered before me his sworn defence without calling any witness.
3. PW1 Faith Muthoni Wangare a daughter of the accused and the deceased testified that at the material time was then aged ten (10) years at the time of the death of the deceased, testified that on July 9, 2009, the accused came home with some meat, which he asked the deceased to prepare and he stepped out of the house. When he came back, he asked the deceased why she had not started preparing the meat and said that he was going to beat her up as he did not fear Kamiti, he then took a stool with which he hit her on the head causing her to scream. She proceeded to sleep and at 4.00 am, the deceased called her to open for her and when she asked the accused to do so, he told her to go to sleep. Later her aunt called Immaculate Njeri came into the house and left with a blanket and some clothes. Later her step mother came holding a paper bag and clothes which she took to the toilet. The accused later told her that her mother had fallen from a car.



4. In cross examination, she stated that her parents used to quarrel which they had reported to the Chief and that her brothers also witnessed the accused hit the deceased.
5. PW2 Alex Nganga stated that on the material day, they had gone to Muthithi for a funeral where the accused left with his wife. He later came home and heard the two arguing, their father then asked them to help him push his lorry which they did enabling him to park it. In the morning the accused called him to go and see what his mother had done and found her in different clothes, he then told him that they should go report to the police that she had been ran over by a vehicle but did not see any blood.
6. In cross examination he stated that they pushed the vehicle at 4.00am and that that they were using touches since it was dark. He did not see his mother at the place where they were pushing the vehicle. He confirmed that her body was one hundred meters behind the lorry and that he did not see his father hit her with a stool.
7. PW3 Benson Kamau Thuita stated that he was informed by PW2 of the death of their mother and that they found him at Bishop Okoye Funeral Home. When he looked at her clothes, they were inside out with no blood stains and since the accused was not willing to place the body in the mortuary, he became suspicious. In cross examination, he confirmed that he did not witness what transpired at home.
8. PW4 Moses Njoroge Thuita stated that he saw the body of the deceased at the mortuary with no injuries, her clothes were clean and were worn inside out. He witnessed the post mortem examinations with the accused not participating in the second one.
9. PW5 Zacharia Mbugua Njoroge was called to the scene by PW2 where he found the body of the deceased behind the lorry and that the accused who was at the scene with an identified Mukorino man told him that he thought that the lorry had gone over a bump only to discover that it was a body. He stated that at the mortuary the body had no visible injuries and her clothes were inside out. In cross examination, he stated that it took long before the inquest was conducted.
10. PW6 George Ndungu stated that he was asked by PW2 to help in pushing the accused lorry, he then went back to sleep. He later heard the lorry stop and the accused crying out with the deceased on the ground dead having been run over on the chest area. He stated that he had earlier seen the deceased at 4.30am standing on the side lines.
11. PW7 Immaculate Njeri was called by the deceased at 4.00 am to help him push the lorry which they did and left it parked facing the road, she later heard the accused crying and when she returned to the scene, she found him holding the deceased on lower chest some thirty meters from the lorry. In cross examination, she stated that she did not hear of any disagreement between the accused and the deceased.
12. PW8 Jane Muthoni Nduati was informed of the death by the accused and that she did not know the circumstances under which the deceased died. PW9 Nancy Wanjiku Murigi stated that she last saw the deceased who was her step mother on the evening of July 9, 2009 but did not know what happened to her. PW10 Dr Peter Muriuki Ndegwa conducted post-mortem examination on the body of the deceased which had bruises on the left side of the head, fracture on the femur ribs ruptured lungs and liver. As a result of his examination he formed an opinion that the cause of death was multiple organ injuries due to multiple force trauma. In cross examination he stated that he could not tell if the death was as a result of road traffic accident and that he recommended further investigations.
13. PW11 PC Erick Gitonga stated that they received a report at Makuyu of a fatal road accident involving a pedestrian who was hit by a lorry and that since some family members were dissatisfied with the post mortem done by Dr Ndegwa on the ground that the accident was a cover up. They lodged a complaint with the DCIO and a further post mortem was done by Dr Mwaura on September 20, 2009 who



formed an opinion that the injuries were inconsistent with road traffic accident and that upon the inquest being conducted, it was recommended that the accused be charged with murder.

14. When put on his defence, the accused stated on oath, that he had asked to be assisted in pushing the lorry and that when it had started, he reversed into the compound at 4.20 am. He noticed that the lorry had hit something so he went to check using his phone light only to find that it was the deceased, he raised an alarm attracting people. He denied there being an argument between him and the deceased and that it was his son Nganga who made a report to the police that his mother had been knocked by a lorry.
15. On the material day he had come from a funeral with Faith Muthoni and Alex Nganga and passed through a butchery to buy meat which they gave the deceased who did not attend the funeral to prepare. He confirmed that since it was dark, he did not see the deceased and that the dispute arose thereafter between him and the children who did not inform him of the second post mortem leading to a burial dispute and upon the children burying their mother at her former husband's place they went to the police and lodged a complaint that he had bribed the police leading to an inquest.

### **Determination**

16. To sustain a conviction on the charge of murder, the prosecution is under a duty to prove beyond reasonable doubt, the fact and the cause of death of the deceased and that the said death as caused by an unlawful act on the part of the accused person with malice aforethought.
17. The fact of the death of the deceased was not disputed throughout this trial. The cause of death was disputed save that the evidence before the Court is that the same was caused by multiple organ injuries due to multiple force trauma. Whereas the accused theory was that the same was as a result of a road accident, the prosecution disputed that theory but offered no evidence to dislodge the same.
18. The following evidence was tendered before the Court and it remains unchallenged, that the accused at some point in the morning asked to be assisted in pushing his lorry and that the deceased who did not participate in the same was seen at the scene standing on the side lines only to be later on found under or near the lorry.
19. There was no direct evidence led by the prosecution on how the deceased met her death or on how she was found under the said lorry save for the evidence of the accused on oath that he felt that the lorry had stepped onto something and upon checking he noticed that the deceased's body was under the lorry which evidence was corroborated through the written statement of one George Ndungu who was not called as a witness and PW7 whose evidence was that she found the accused at the scene holding the chest of the deceased .
20. The prosecution case was therefore solely founded on circumstantial evidence, that the accused had as per the evidence of PW1, the accused hit the deceased with a stool on the material night at 8.00 pm, but did not state the place which was hit and as whether that would have caused the nature of injuries as per the evidence of PW10. PW2 who was at the scene did not corroborate the evidence of PW1 who was a minor at that time having stated in cross examination that he did not see the accused hit the deceased with a stool and that the last time he saw her, was the previous night as she fought with the accused.
21. The other circumstantial evidence tendered was that the children of the deceased suspected a false play in the death of their mother in that her clothes were not dirty and were worn inside out, which suspicion led them to engage an independent pathologist who was nonetheless never called to testify in as much as his opinion was that the cause of death was torn lung, which injuries were inconsistent with road traffic accident as per the evidence of PW11.



22. This evidence is weighed against that of PW10 Dr Peter Ndegwa whose evidence was that the cause of death was multiple organ injuries due to blunt force trauma and whose recommendation was that the circumstances should be investigated further.
23. In cases that are solely based on circumstantial evidence, as was stated in *Rex V Kipkering Arap Koske & Another* [1949] 16 EACA 135 the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt.
24. At the close of the prosecution case, there remained the gap in the circumstantial evidence tendered as whether the accused caused the death of the deceased with malice aforethought. There was only evidence of suspicion on the part of the children that their father might have killed their mother and this led them to bury the same at the home of her former husband who was their biological father.
25. It is trite law that mere suspicion however strong cannot form a basis of conviction in a criminal where the prosecution is required to prove the guilt of an accused person beyond reasonable doubt as was stated in *Mary Wanjiku Gichira v Republic*.
26. I find and hold that the prosecution failed to prove malice aforethought on the part of the accused person which is an essential ingredient more so where as in this case the prosecution case is founded on circumstantial evidence and I further find and hold that the accused as expected having been put on his defence gave a plausible explanation of the circumstances leading to the death of the deceased having taken judicial notice of the circumstances leading to the institution of the inquest which led to him being charged with the offence before the Court.
27. I therefore in the final analysis find and hold that the prosecution failed to establish the case against the accused beyond reasonable doubt and therefore find the same not guilty.
28. The accused shall be set free forthwith unless otherwise lawfully held.
29. And it is ordered.

**DATED, SIGNED AND DELIVERED AT MURANGA THIS 20<sup>TH</sup> DAY OF SEPTEMBER 2023.**

**J. WAKIAGA**

**JUDGE**

