



**Director of Public Prosecution v Muriungi (Criminal Case 122 of 2018)
[2023] KEHC 23628 (KLR) (12 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 23628 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE 122 OF 2018
TW CHERERE, J
OCTOBER 12, 2023**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTION PROSECUTOR

AND

PATRICK MUTHUI MURIUNGI ACCUSED

JUDGMENT

1. Patrick Muthui Muriungi (Accused) is charged with the offence of Murder Contrary to section 203 as read with section 204 of the [Penal Code](#) in that on December 11, 2018 at Kaguata village, Thuuri Sub-Location, Tigania East Sub-County within Meru County murdered Gerevasio Nkunja M' Munya

Prosecution case

2. The prosecution case as narrated by Monica Nkatha is that on December 8, 2018, her husband Gerevasio Nkunja M' Munya (Nkunja) arrived home at about 09.00 am and informed her that Patrick Muriungi and Muriithi who were unknown to her had assaulted by hitting him on the head. That he slept and woke up with a headache the following morning and continued taking painkillers until the night of December 10, 2018 when his condition deteriorated and he was taken to hospital where he was admitted. On December 12, 2018, she received information that her husband had died.
3. Stephen Kibubi stated that on December 8, 2018, one Fridah informed him that Nkunja had been assaulted. He found Gerevasio lying unconscious. He escorted Nkunja home after he regained consciousness. It was his evidence that he did not see the persons that assaulted Gerevasio.
4. Fridah Kananu stated that she had attended a ceremony at the home of one Kinyua on December 8, 2018 and that Nkunja who was her brother in law and Accused were present. She stated that from the home of Kinyua, they proceeded to Muriithi's butchery where Accused found them and without any provocation beat up Nkunja as a result of which he fell and injured his head. She reported the matter to Stephen Kibuba and together they escorted Nkunja home.



1. On December 12, 2018, Simon Kimenchi went to visit his cousin Nkunja in hospital and was informed he had died the previous day which information he relayed to Nkunja's wife.
6. Nkunja's wife reported his death to police on December 14, 2018 and Accused was arrested on December 15, 2018.
7. An autopsy on Nkunja's body was conducted December 18, 2018. The postmortem form tendered as PEXH. 1 reveals that Nkunja suffered subdural hematoma at temporal parietal region (right side of head) with small fracture on posterior fossa (base of skull/back of head) and the doctor formed an opinion that he died of severe head injury with subdural intraventricular hematoma due to blunt force trauma.

Defence Case

8. In his sworn defence, Accused stated that he was a bodaboda rider. It was his evidence that Fridah Kananu who makes illicit brew asked him to take home a customer that was unknown to him. That the customer who was too drunk fell off tried to board the motor cycle but he slipped and fell and the motor cycle broke thereby aborting the journey to the customer's home.
9. Amos Kanyi Isaac he was at his home next to Accused's kiosk. He stated that on December 8, 2018, he saw his neighbour Fridah Kananu with a man who was too intoxicated that he could hardly walk. That Fridah asked him to let the man rest in his store but he declined and requested her to get a bodaboda to take him home. That Fridah walked to Accused's kiosk and in company of Accused returned to where the drunk man was lying and that was the last he saw of them.

Analysis and determination

10. Section 203 and 204 of the Penal Code under which the accused is charged provide for the offence of murder and the punishment for it. They require that the prosecution prove beyond reasonable doubt that the accused by an unlawful act or omission caused the death of the deceased through malice aforethought.
11. I have considered all the evidence availed in this case as set out above and the issue in question is whether the prosecution has proved the death of the deceased; that Accused persons caused the death and that they were actuated by malice.
 - a. The death of the deceased
12. The postmortem form tendered in evidence PEXH. 1 reveals that that Nkunja suffered subdural hematoma at temporal parietal region (right side of head) with small fracture on posterior fossa (base of skull/back of head) and the doctor formed an opinion that he died of severe head injury with subdural intraventricular hematoma due to blunt force trauma.
 - b. Proof that accused person committed the unlawful act which caused the death of the deceased
13. The standard of proof in criminal case such as this one must be beyond reasonable doubt enough to lead to a conviction. Our criminal justice system is pegged on article 50(2) (a) of the Constitution which guarantees individual freedoms under the Bill of Rights, particularly, the aspect of innocence until proven guilty. It cannot be gainsaid that this burden of proof rests on the State and does not shift to the Accused.



14. Lord Denning in the case of *Miller v Minister of Pensions* (1942) A.C. stated as follows: -

“It need not reach certainty but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadows of doubt. The law would fail to protect the community if it admitted forceful possibilities to deflect the course of justice. If the evidence is so forceful against a man to leave only a remote possibility in his favour which can be dismissed with the sentence, of course it is possible but not in the least probable, the case is proved beyond reasonable doubt but nothing short of that will suffice.”

15. The degree of proof in criminal cases was properly established in the classic English case of *Woolmington v DPP* 1935 A C 462. Similarly, in *Bakare v State* 1985 2NWLR, Lord Oputa of the Supreme Court of Nigeria adopted the principle as follows at page 465: -

“Proof beyond reasonable doubt stems out of the compelling presumption of innocence inherent in our adversary system of criminal justice. To displace the presumption, the evidence of the prosecution must prove beyond reasonable doubt that the person accused is guilty of the offence charged. Absolute certainty is impossible in any human adventure, including the administration of criminal justice. Proof beyond reasonable doubt means just what it says it does not admit of plausible possibilities but does admit of a high degree of cogency consistent with an equally high degree of probability”.

16. Only Fridah stated that she saw Accused assault Nkunja. Accused on the other hand stated that Nkunja slipped and fell because he was drunk. That Nkunja was drunk was confirmed by both Frida and Accused’s witness Amos Kanyi.

17. There is no evidence that the injuries on Nkunja’s body could not have been caused by a fall and Accused’s defence is therefore probable.

18. Accused’s defence that Nkunja who was intoxicated was injured after he fell casts doubt on the uncorroborated prosecution case the effect of which the benefit goes to the Accused.

Malice aforethought

19. The prosecution having failed to prove *actus reus*, I find that it would be an exercise in futility for this court to delve into the issue of malice aforethought.

20. In the end, I find that the prosecution case was not proved and Accused is found not guilty of murder and is acquitted.

DATED THIS 12th DAY OF October 2023

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

Accused 1 & 2 - Present

For Accused - Mr. Nyenyire Advocate

For DPP - Ms. Rita (PC 1)

