



**Republic v Keynan (Criminal Case E010 of 2023)  
[2024] KEHC 14547 (KLR) (14 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14547 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CRIMINAL CASE E010 OF 2023  
JN ONYIEGO, J  
NOVEMBER 14, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ABDIQADAR ABDULLAHI KEYNAN ..... ACCUSED**

**JUDGMENT**

1. The accused person herein Abdiqadar Abdullahi is charged with the offence of murder contrary to section 203 as read with 204 of the Penal Code. The particulars of the offence are that on 14.07.2023, at Hagadera refugee camp, Hagadera location of Fafi Sub County within Garissa County he unlawfully murdered Mohammed Noor.
2. The accused person pleaded not guilty to the charge. Nine (9) witnesses were called by the prosecution in support of its case.
3. PW1, Hadhan Abdullahi Keynan, mother of the deceased recalled that the deceased was 1 year and some months before he was killed. That she stays at Ifo Camp but at the material time, she was staying with her mother. It was her evidence that the accused is her elder brother. On the material day, her mother had left for hospital as she remained home together with the accused person and young children. That the accused was splitting firewood when he pointed at her neck with an axe and proceeded to hit her. As a consequence, she remained unconscious for 1 ½ months at Garissa hospital. Subsequently, she lost her 9-month pregnancy. She later learnt that her son, the deceased herein had been killed by the accused person. On cross examination, she stated that her brother had mental challenges.
4. PW2, Nasteha Hassan Abdi, a neighbour to the accused stated that on 14.07.2023 at 1.00 p.m., she was at her home when she heard a child crying and upon rushing to the scene, she found accused running away with a piece of cloth in his hands. Meanwhile, PW1 and another young child were lying on the



- ground. That she called her mother who came and thereafter took the young child and PW1 who was bleeding while unconscious to the hospital.
5. PW3, Abdinasir Abukali Keynan recalled that the accused is his younger brother and that he was aware that previously, the accused was charged with another offence. He stated that on 14.07.2023, he went work but upon returning home, he saw blood on the floor and upon enquiring what had happened, he was told that the accused had injured PW1 and her child.
  6. It was his case that he fainted and only woke up after half an hour. He further stated that the accused person escaped but later on returned during the night hours and so, he informed the police who came and arrested him. On cross examination, he stated that the accused person suffered from mental challenges and that he had since forgiven him and further urged that the Quran should be read to him.
  7. PW4, Marian Abdi Hassan, mother to the accused testified that on the material day, she had left for a dispensary nearby to seek medical care. After being treated, she passed by the house of Yurab Keynan, her daughter who was also sick and after that, went to a neighbour's house to buy soap. While there, her young children arrived running. They informed her that PW1 had been beaten and so, she proceeded to her home where she found her daughter Hodhan and her child lying on the ground. That Sukuri and Abdi helped her take Hodhan to the hospital as she was unconscious. Unfortunately, PW1's child was dead hence was later on buried. She stated that the children told her that the accused was responsible for PW1's assault and the death of the child. On cross examination, she stated that she did not witness the incident but was also aware of the mental problem the accused faced. She further stated that on the material day, the accused was alright and therefore she did not understand why he acted in the said manner.
  8. PW5, No. 1198367 Onchomba Abuga Gilford recalled that on 16.07.2023, he was at his house when Sgt. Hussein requested him to accompany PC Rizak to Block A5 within Hagadera Refugee Camp to arrest a suspect of murder. They went to the said block in company of the reportee, a brother to the accused who identified the accused person to them. They arrested the accused person and handed him to the reporting section at the police station. He identified the accused person as the person they had previously arrested.
  9. PW7, Dr. Cyrus Chirchir testified that he performed a post mortem examination in respect of the deceased's body one Mohamed Noor Abdi who had been brought alongside a very sick mother who was 8 months pregnant. On general observation, the body was of a male Somali race and his clothes were blood stained. There was no chest movement, the pupils were dilated and the approximate time of death was about an hour prior. There was a deep cut wound below the right clavicle bone above the right hand, deep cut wound below the right ear and both the upper and lower limbs were in an extended position. He did not open the body because the hospital is not equipped to do so but nevertheless, he opined that the cause of death was hypovolemic shock secondary to trauma (stab wound) leading excessive bleeding.
  10. PW8, Kimagetich Benard, a government chemist stationed at Nairobi testified that on 24.07.2023, he received exhibits from Cpl Muya James of Hagadera police station. The items were an axe with wooden handle marked A collected from the scene, item 2 – torn red t-shirt in khaki envelope marked B collected from the scene, item 3 – blue kikoi in khaki envelope marked C collected from the scene, item 4 – maroon wide turban in khaki envelope marked D collected from the scene, item 5 - blood sample in a container marked E – for Hordhan Abdullahi Keynan. Accompanying the exhibit memo were instructions to determine the presence and relationships of biological evidential material.
  11. On examination, the axe item used marked A, T-shirt item B, kikoi item C and turban item D were heavily stained with human blood. The blood stains were analyzed and DNA profile generated. In



- conclusion he opined that the DNA profile generated from the blood stains on the axe (item A) matched the DNA profile generated from the blood sample marked 'E', Hodan Abdillahi Keynan, mother to Mohamed Noor Abdi (deceased); also based on the DNA profiles generated from the listed items, there were 99.99+% more chances that the donor of the blood stains on the kikoi(item c), the T-shirt (item b) and the turban (item D) is a biological son to the donor of the blood sample marked 'E', Hodan Abdillahi Keynan, mother to Mohamed Noor Abdi (deceased).
12. On cross examination, he stated that the blood in the T-shirt, kikoi and turban matched that of the deceased while the axe had different blood stains from that in the kikoi, t-shirt and turban.
  13. PW9, No. 240152 IP Fred Kaitany, the investigating officer stated that on 13.07.2023 at about 1840hrs, CIP Ombasa, informed him of an incident which had occurred within Hagadera refugee camp. He thus left for the scene where he found a crowd at the gate. Upon, proceeding further, he saw people surrounding motor vehicle registration No. KCV 877V Succeed white in colour. The said vehicle had in it the body of Mohamed Noor. They processed the motor vehicle and in the process, informed the father of the deceased to make a formal report at the station. The body was taken to IRC hospital within Hagadera but shortly thereafter, they saw an ambulance carrying a bleeding woman known as Hordan whom they rushed to the hospital.
  14. He reiterated the evidence of PW2 and PW3 and further stated that previously, the accused person was released from the prison and thereafter, went home to threaten his mother that he would kill her. He reiterated that the same clearly showed that the accused person had formed the intention to kill in as much as Maryann stated that her son was mentally disturbed. That he later recorded statements from the witnesses and consequently charged the accused with the offence of murder.
  15. He further stated that on 16. 07.2023 at 15.50 hrs, Abdinasir discovered the murder weapon under a mattress on the bed where the suspect had spent the night. On the same day, they proceeded to Block 5 where Abdinassir, the brother to the accused handed over to them the axe which was believed to have been used in committing the offence herein. He further stated that having collected clothes belonging to the accused, to wit stained t-shirt, kikoi and turban, he prepared a memo and forwarded the exhibits to the government chemist for analysis. He further stated that before preferring the charge herein, he took the accused for mental assessment and the accused was found to be alright. That nonetheless, the accused had mild mental illness due to chewing khat.
  16. Upon being placed on his defence, DW1, Abdiqadar Abdullahi, testified that in as much as he faced the charge of murder, he did not intend to kill somebody. That previously, he was examined at Garissa general hospital where he was found to be having mental challenges. It was his case that occasionally, he suffered from mental infirmity and when the attack happened, he fought people around him. He stated that on the fateful day, while he was splitting firewood, he figured an impending attack and so, he used the axe to fight back. He sought for forgiveness by urging the court that he was not in his right mind to appreciate his actions at the time in question.
  17. On cross examination, he stated that he was aware of a previous case he had in court but denied ever threatening his mother. He contended that he started having mental challenges as from the year 2021 when he was read for the Quran. On re-exam, he conceded that it is true that he killed the deceased but the same was not intentional.
  18. The defence closed their case and the court directed that parties file their respective submissions.
  19. The prosecution in their submissions dated 22.07.2024 submitted that the evidence tendered was sufficient to sustain a charge of murder. It was urged that as was held in the case of Anthony Ndegwa Ngari vs Republic [2014] eKLR, for the charge of murder to be proved, the prosecution must prove



the following ingredients: that the death occurred, that the accused committed the unlawful act which caused death and that the accused person was possessed of malice aforethought. It was contended that PW2, PW3 and PW6 indeed confirmed that death occurred and further, the evidence on record clearly points to the accused person as being responsible for causing the death of the deceased. On malice aforethought, the prosecution placed reliance on the case of *Republic vs Tubere* 1945 EACA 63 where it was held that malice aforethought in murder maybe established by ascertaining the nature of the weapon used. That noting that the accused person attacked the deceased with an axe, is a clear indication that he intended to either cause harm or kill the deceased.

20. On the defence of insanity as argued by the defence, the prosecution while relying on the principles of McNaughten rules urged that the same was not available for the accused person for the reason that the doctor stated that in as much as he had a mild form of mental illness, he understood the offence and was able to defend himself. It was argued that the accused person after leaving prison where he had been imprisoned over another offence, he swore to kill his mother and indeed he actualized his threat of killing somebody by murdering the deceased. This court was therefore urged to convict the accused person for the offence herein.
21. The defence filed submissions dated 24.07.2024 arguing that indeed the accused person was not possessed of the right mind at the time he committed the offence. The court was invited to be guided by the finding in the case of *Julius Wariomba Githua vs Rep, Criminal Appeal No. 261 of 2006* where it was held that the duty of the trial court is to ensure that the accused person's mental status at the time he is alleged to have committed the offence is established. That the medical report of the accused person clearly proved that the unfortunate attack by the accused person was as a result of the mental challenges faced by the accused at the material time. This court was therefore urged to acquit the accused person.
22. I have considered the evidence adduced herein by both the prosecution witnesses and the defence proffered by the accused person. The main issue for determination is whether the prosecution has proved its case against the accused person to the required standard which is beyond any reasonable doubt.
23. Section 203 of the Penal Code provides that:

“ Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
24. For the prosecution to secure a conviction on the charge of murder, it has to prove four main elements against an accused person. In *Anthony Ndegwa Ngari vs Republic* [supra] , the elements of the offence of murder were listed as follows:
  - i. That the death of the deceased occurred;
  - ii. That the death was due to an unlawful act or omission;
  - iii. That it was the accused who committed the unlawful act or omission which caused the death of the deceased; and
  - iv. That the accused had malice aforethought.
25. On whether there was proof of death and the cause of the said death, the death of the deceased was proved by the evidence of PW1,2,3,4,7 and 9 all who testified as having seen the deceased's body. As to the cause of the deceased's death, PW7 Dr. Chirchir produced a post-mortem report as PEX 1 detailing the injuries found on the body of the deceased and his opinion on the cause of death as



being hypovolemic shock secondary to trauma (stab wound) leading to excessive bleeding. As such, the prosecution proved the element of death satisfactorily.

26. On whether the death of the deceased was caused by an unlawful act or omission, the aspect of when an act causing death can be said to be lawful has been recognized from time immemorial. Article 26 of *the Constitution* is clear that every person has the right to life and that a person shall not be deprived of life intentionally except as authorized by *the constitution* or other written law. [ See the case of Gusambizi Wesanga vs Republic [1948] 15 EACA 65].
27. As stated above, there is no doubt that the death of the deceased was caused by the injuries that he sustained as was detailed in PEX 1. There is no evidence showing that the injuries found on the body of the deceased were self-inflicted or that it was justified in any way under the law. Further evidence presented before court irresistibly points to an unlawful act that led to the death of the deceased following an assault. Accordingly, I find and hold that the death of the deceased was caused by an unlawful Act.
28. On whether the prosecution proved beyond reasonable doubt that it was the accused person herein who committed the unlawful act which caused the death of the deceased, the evidence on record is clear. It was not controverted that the accused person caused the death of the deceased. In his defence, he stated that it is true that he killed the deceased but the same was not intentional.
29. The accused mounted a defence from the onset to the effect that he was suffering from a mental illness. Pw1 mother to the deceased gave a detailed testimony how her brother the accused herein attacked her and her son the deceased herein using an axe. The murder weapon was recovered from the accused's house. Accused admits attacking the deceased but blamed it on his mental illness. Accordingly, the prosecution has established the actus reus.
30. On the defence of infirmity, Section 11 of the Penal Code (Cap 63 Laws of Kenya) provides that: –

“Every person is presumed to be of sound mind and to have been of sound mind at any time which comes into question until the contrary is proved.”
31. Further, from the provision of Section 11, the presumption of insanity is rebuttable. Where an accused person raises the defence of insanity, the burden of proving insanity rests with him on a balance of probability. [See MARRI vs Republic [1985] KLR 710 and Muswi s/o Musele vs Republic [1956] EAC 622].
32. Section 12 provides: -

“A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is through any disease affecting his mind incapable of understanding what he is doing or of knowing that he ought not to do the act or make the omission, but a person maybe criminally responsible for an act or omission although his mind is affected by disease, if such disease does not in fact produce upon his mind one or other of the effect above mentioned in reference to that Act or omission.”
33. It is thus clear that insanity is a defence if proved that at the time the accused committed the offence he was labouring under the disease of the mind. However, for the said defence to be available, it must be shown that the accused at the time of doing the act or making the omission was incapable of understanding what he was doing or of knowing that he ought not to do the act or make the omission as a result of the disease of the mind.



34. The Court of Appeal in the case of Leonard Mwangemi Munyasia vs Republic (2015) eKLR held that;

“if it is shown that the appellant suffered from this condition then under Section 9 & 12 of the Penal Code he could not be held criminally responsible for the murder of the deceased.

Both Section 12 aforesaid and the M/c Naughten Rules recognise that insanity will only be a defence if it is proved that at the time of the commission of the offence charged, the accused person by reason of unsoundness of mind, was either incapable of knowing the nature of the act he is charged with or was incapable of knowing that it was wrong or contrary to the law. The test is strictly on the time when the offence was committed and no other.”

35. In the instant case, the actions of the accused person prior and after the death of the deceased person are what calls for close scrutiny. I say so for the reason that PW4 testified that on the material day, the accused was alright and therefore she did not understand why he acted in the said manner.

36. PW9 also testified that previously, the accused person was released from the prison and thereafter, went home to threaten his mother that he would kill her. That he had promised to kill somebody and thereafter proceeded to hit PW1 and in the same breadth killed the deceased. Of importance to note is the fact that the alleged ‘insanity’ conveniently struck when the other members of the family were away with only the deceased and PW1 who was helpless left behind.

37. The above notwithstanding, the actions of the accused person after the fact also left a lot to be desired. I say so for the reason that PW2 stated that upon responding to the cries of the child, she rushed to the scene and found the accused person running away with a piece of cloth in his hands. Also, PW3, testified that upon returning home, he saw blood on the floor and upon enquiring of what had ensued, he was told that the accused had injured PW1 and her child. It was his case that the accused person escaped but later on returned during the night hours and so, he informed the police who came and arrested him.

38. The witness further stated that, he found the alleged murder weapon hidden in the mattress of the accused person. The question that this court grapples with is that why did he run away? why did he hide the murder weapon in his mattress? A simple answer is that he was all aware of his actions and the would be consequences of the same. This is not a conduct consistent with a mentally insane person.

39. In the Court of Appeal decision in the case of Joseph Kimani Njau vs R (2014) eKLR it was held as follows:

“Before an act can be murder, it must be aimed at someone and in addition, it must be an act committed with one of the following intentions, the test of which is always subjective to the actual subject;

- i) The intention to cause death;
- ii) The intention to cause grievous bodily harm;
- iii) Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from his acts, and commits those acts deliberately and without lawful excuse with the intention to expose a potential victim to that risk as the result of those acts.



It does not matter in such circumstances whether the accused desires those consequences to ensue or not in none of these cases does it matter that the act and intention were aimed at a potential victim other than the one succumbed.....”

40. From the above wording, it is my humble view that there were purposeful actions by the accused person as his conduct according to me, demonstrated that he in fact foresaw the consequences of what he was doing immediately before and after the incident thus the same forming necessary intent of the perpetration of the offence herein. Further, the evidence taken as a whole clearly shows a well-orchestrated move by the accused person to eliminate PW1 together with the deceased.
41. In any event, the mental assessment report at the time of taking plea revealed that the accused was fit to stand trial save for some mild mental illness associated with chewing khat/miraa. I do not find sufficient evidence to conclude that the accused did not know or understand what he was doing at the material time. His defence of insanity is does dismissed.
42. In view of the above conclusion, I am persuaded to conclude that there is sufficient evidence to find accused person guilty of murder to which I do convict him accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT GARISSA THIS 14<sup>TH</sup> DAY NOVEMBER 2024**

**J. N. ONYIEGO**

**JUDGE**

