



**Republic v Mburu (Criminal Case 23 of 2017)
[2024] KEHC 15612 (KLR) (Crim) (4 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15612 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL CASE 23 OF 2017**

**LN MUTENDE, J
DECEMBER 4, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

PATRICK MBURU ACCUSED

JUDGMENT

1. Patrick Mburu, the Accused, was indicted following allegations of having murdered Sabina Juma (deceased) on the 12th day May, 2017 at Korogocho in contravention of Section 203 as read with Section 204 of the Penal Code.
2. Briefly, facts of the case were that on the fateful day, the deceased left home going to the Market. Approximately 30 minutes later it turned out that she had been stabbed with a sharp object. The suspect (Accused herein) was pursued and arrested. However, she succumbed to injuries sustained.
3. To prove the case the State called nine (9) witnesses. PW1 Joseph Ochieng Onganga, the brother of the deceased who upon receiving information relating to the incident went to Tumaini Dispensary where the deceased had been taken, but, found her already dead. He also identified the body to the Doctor who conducted the Post Mortem.
4. PW2 Wilson Mwalo the husband of the deceased got a report of the deceased demise. He later identified her body to the Doctor who performed the Post Mortem.
5. PW3 No. 69025 Corporal Henry Muchiri Njeru received a report of the incident and rushed to Tumaini Dispensary where he found the victim lying on a handcart. He was joined by the OCS Chief Inspector Monda and the victim was pronounced dead.



6. PW4 Martha Waceke, was at the Market place with Lucy Njoki. A lady arrived intending to purchase something from Lucy Njoki and next to her stood the accused. All over a sudden she saw the lady bleeding and she fell down. People raised an alarm and the accused ran away. They pursued and arrested him with the knife in his hand. He was taken to Korogocho Police Station. On cross examination she said that she saw the accused stab the deceased with the knife.
7. PW5 Lucia Njoki testified that the deceased was stabbed while at her place of business. That upon people shouting that Mburu, the accused, had stabbed the old lady, he ran away.
8. PW6 Julia Wanjiku was not present when the act was committed.
9. PW7 George Mwangi saw the deceased go to select items where second hand items are ordinarily sold. As she was picking the items, he noticed the accused standing next to her. All over a sudden she fell down. The accused started running away only to be arrested. On cross examination he said that he saw the accused stab the deceased and he assisted by taking the deceased to hospital.
10. PW8 Dr. Peter Muriuki Ndegwa conducted the post mortem on the body of the deceased and opined that the cause of death was exanguination hemorrhage due to vascular injuries due to penetrating sharp trauma stab wound.
11. Upon being placed on his defence the accused who gave sworn evidence stated that he used to collect garbage, being a member of street family. That on the 12th May, 2017 he went to the quarry at Ngomongo and collected items that he took to be weighed then went to sit at some place. While there he heard noise and people shouted his name. They started beating him alleging he had committed an act that caused death. That he had not had enough sleep and he had drunk chang'aa prior to going to where he was found, and, also sniffed glue. That he did not understand the offence he was being accused of.
12. At the close of the defence case submissions were filed by the accused. Through learned defence counsel, Mr. Gatobu Inoti, it was urged that PW4 and PW5 who were at the scene only saw a lady fall down bleeding profusely. They did not attribute any action to the accused in their statement to the police. That the allegation came up on cross examination. That the implement used was never recovered or presented as an exhibit.
13. That according to PW4 and PW5 the event happened without premeditation; evidence adduced doesnot paint an act of willful deliberation and planning. He cited the case of Ernest Asami Bwire Abang'a alias Onyango v Republic (CACRA NO. 32 of 1980) where the Court held that:

“The question of intention can be inferred from the true consequences of unlawful acts or omission of the brutal killing which was well planned and calculated to kill or to do grievous harm upon the deceased”
14. And, that malice aforethought was not proved against the accused.
15. The accused faces the offence of murder which is defined in Section 203 of the Penal Code thus:

Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
16. The elements of the offence as clearly spelled out are whether: (a) Death occurred.

(b) The death was caused by an unlawful act or omission.



- (c) It was actuated by malice aforethought.
- (d) The accused was the perpetrator. (Also see the case of Anthony Ndegwa Ngari v Republic (2024 eKLR).
17. Eye witnesses to the act testified to the deceased having fallen down upon sustaining the injury that she succumbed to. PW8 performed the examination on the mortal remains of the deceased and made a conclusion as to the cause of death. This was a fact of death which is not disputed.
18. The Prosecution evidence established the fact of death that resulted from a broken vessel due to injuries caused by a stab wound. The wound was caused by another person. The rule of law would expect people to be of good conduct. Breaching a duty imposed by law makes the act unlawful. Stabbing an individual is contrary to the law, therefore the act committed herein that caused the death of the deceased was unlawful.
19. Malice aforethought is provided for in Section 206 of the Penal Code that provides thus:
- Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances— (a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not; (b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused; (c) an intent to commit a felony; (d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.
20. The culprit acted without uttering a word. He just inflicted an injury on the person of the deceased. Clearly, his intention was at least to cause grievous harm to the victim. He therefore acted with malice aforethought. Secondly, the nature of injury sustained and the weapon used would help the court draw a conclusion that he had malice aforethought. In *R v Tubere s/o Ochen* (1945) 12 EACA 63 the East African court held that:
- “The court has a duty to perform in considering the weapon used and the part of the body injured in arriving at a conclusion as to whether malice aforethought has been established, and it will be obvious that ordinarily an inference of malice will flow more readily from the case, say a spear or a knife than the use of a stick.”
21. This therefore brings in the issue whether the accused herein was the perpetrator. Witnesses who testified did not give direct evidence as to the actual stabbing. Therefore evidence adduced was circumstantial.
22. It is trite that the court can rely on circumstantial evidence, the basis being an inference drawn to connect the evidence so as to reach the conclusion. The test that must be satisfied where the case solely rests on circumstantial evidence. In *Abanga alias Onyango v Republic*, Cr. App. No 32 of 1990, the Court of Appeal stated that:
- “It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests:
- i. The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;



- ii. Those circumstances should be of a definite tendency unerringly pointing towards the guilt of the Accused;
- iii. The circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the Accused and none else.”

23. In *Kimeu v Republic* (2002) 1KLR 756 the Court of Appeal held that:

“Before drawing the inference of accused’s guilt from circumstantial evidence the court must be sure that there are no other co-existing circumstances which would weaken or destroy the inference of guilt of the accused.”

24. The accused is stated to have been a street urchin, a fact that is admitted. He was seen by eye witnesses standing in a close proximity to the deceased prior to her falling down while bleeding. The accused was known to the witnesses. People screamed on seeing what happened as it was in a day broad light; and, the accused ran away, was pursued and arrested.

25. The subsequent conduct of the accused of fleeing from the scene demonstrated a guilty mind. This was circumstantial evidence that pointed to the accused as the person who must have committed the criminal act that resulted into the death of the deceased.

26. The defence put up was a denial. The accused claimed to have been resting when attacked by people who claimed he had caused serious death. However, considering evidence of eye witnesses who arrested him after the act, the strength of evidence was not weakened.

27. The accused also argues that he was intoxicated on the material day. The argument was not brought forth at the outset for witnesses who saw and arrested him to admit or contest the allegation. Other than being an afterthought, it is not indicated that the alleged inebriation was in an advanced stage that could hinder him from understanding his actions. Such that he could not be criminally responsible for the act.

28. The Investigating Officer in the matter did not testify and in the result the murder weapon stated to have been recovered was not availed. Failure to call the Investigation Officer would be fatal if evidence adduced is so scanty hence insufficient to prove the case brought forth by the prosecution.

29. On the question of the murder weapon being unavailable, this does not disapprove the prosecutions case. In *Karani v Republic* (2010) 1KLR the court held that:

“The offence as charged could have been proved even if the dangerous weapon was not produced as exhibit as indeed happens in several cases where the weapon is not recovered. So long as the court believes, on evidence before it, that such a weapon existed at the time of the offence, the court may still enter and has been entering conviction without the weapon being produced as exhibit”.

30. The upshot of the matter is that the State has proved the case against the accused beyond reasonable doubt. He is guilty and convicted for the offence of murder as charged.

31. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 4TH DAY OF DECEMBER, 2024.



L. N. MUTENDE
JUDGE

