



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CRIMINAL CASE NO. 20 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

MELDRED NAFULA WAWIRE.....ACCUSED

JUDGMENT

1. **Meldred Nafula Wawire** is charged with an offence of murder contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars of the offence are that on the 3rd day of August 2018, at **Murumba** shopping Centre, in **Butula** sub County of **Busia** County, murdered **Farida Catherine Akello**.
3. The prosecution case was that the deceased followed the accused to her house at about 11 p.m. She broke the window pane of the accused's window. There was an altercation before the accused went out and stabbed her.
4. In her defence, the accused, contended that at about 11 p.m. when she was going to buy medicine, she found the deceased lying beside the road. She denied any involvement in her death.
5. The issues for determination are:
 - a) Whether the accused stabbed the deceased;
 - b) Whether the deceased provoked the accused; and
 - c) Whether the offence of murder was proved against her.
6. Medina Mmboga Olukusi (PW1) testified that she was a friend to both the accused and the deceased. She was a neighbour of the accused. At about 11 p.m., she was woken up by some noises. Before she went out, she heard the voice of the deceased though she did not testify what the deceased said. When she went out, she heard the accused asking the deceased why she had followed her up to her house.
7. Upon reaching out, she found the accused having gone out. She also noted that the deceased had broken a window pane of the deceased's window. She found the two holding each other. When the accused left the deceased and went back to her house, the deceased told her that she had been stabbed. She had a wound on the neck. Upon telling her so, she fell down.
8. PW1 sought the assistance of her employer and she was taken to Kuniyangu hospital where she was pronounced dead on arrival.
9. Dr. Ombajo Laudian performed the post mortem on the body of the deceased and the report was produced in court by Dr. Hillary Kiplagat (PW4). The report indicated that the body of the deceased had a deep cut wound on the right clavicular region medial to the neck. He formed the opinion that the cause of the death was severe hemorrhage secondary to the cut wound.
10. The evidence of sergeant Amos Alekana (PW3) was that at about 11.30 p.m. on 3rd August 2018, the accused called him on phone and reported that she had stabbed a girl who had attacked her in her house.
11. Contrary to what the accused said in her defence, the evidence on record has established that she was the one who fatally stabbed the deceased herein.
12. In order for a conviction for the offence of murder to be founded on the evidence on record, the prosecution must prove the existence of malice aforethought. In **Black's Law dictionary, 10th Edition** malice aforethought is defined as:

The requisite mental state for common-law murder, encompassing any one of the following (1) the intent to kill (2) the intent to inflict grievousbodily harm (3) extremely reckless difference to the value of human life (the so-called “abandoned and malignant heart”), or (4) the intent to commit a dangerous felony (which leads to culpability under the felony-murder rule).

13. Section 206 of the Penal Code gives instances when malice aforethought may be proved. It provides:

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.

In the instant case, the deceased was the aggressor. She went to the house of the accused and broke a window pane before the two physically engaged. Though the accused has not pleaded provocation, this defence is available to her. Malice aforethought was not therefore proved.

14. The prosecution has however proved beyond any reasonable doubt the lesser offence of manslaughter. I accordingly reduce the charge of murder to that of manslaughter. I acquit the accused of the charge of murder. I find him guilty and convict him of the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.

DELIVERED and SIGNED at BUSIA this 18th day of February, 2020.

KIARIE WAWERU KIARIE

JUDGE