



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CRIMINAL CASE NO. 3 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

DANIEL ERANACHI ETYANG.....ACCUSED

JUDGMENT

1. **Daniel Eranachi Etyang** 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 16th day of January 2019, at **Alelesi** village **Teso** sub County of **Busia** County, murdered **Hellen Ekisa Etyang**.
3. The accused and his wife frequently fought but none of the witnesses was able to tell the court why the couple engaged in physical confrontations. On the material day, the prosecution contended that the accused fatally injured his wife. He locked her dead body in the house and fled to Uganda.
4. In his defence, the accused denied any involvement in the offence and pleaded an alibi.
5. The issues for determination are:
 - a) Whether the alibi defence is convincing;
 - b) Whether the accused fatally beat his wife; and
 - c) Whether the offence of murder was established.
6. Rosemary Makokha (PW1) is a neighbour of the accused. She testified that on 16th January 2019 she heard a woman raise an alarm at about 5.30 p.m. and the same continued for about half an hour. She said this was a frequent occurrence in that home. On 18th January 2019 she found the mother of the accused with a young grandchild. She informed her that the deceased ran away after she was beaten.
7. Fedelis Atwani Omuse (PW2) another neighbour testified that the accused used to frequently beat his wife, the deceased herein. On 16th at about 8 p.m. she heard a woman crying from the home of the accused. When she enquired she was told it was Hellen who was crying.
8. On 18th January 2019 she found the mother of the accused carrying a child of the deceased. On enquiring about the whereabouts of Hellen, the mother of the accused told her that since the accused and Hellen fought, she had not seen any of them.
9. The accused contended that he and his wife were partaking alcohol but his wife retired early. When he returned at home at 3 a.m., he found his wife dead after he forced the door open.
10. When an accused has pleaded an alibi, he does not assume the burden of proving the same. This was held by the Court of Appeal in the case of **Kiarie vs. Republic [1984] KLR** where the Court of Appeal held:

An alibi raises a specific defence and an accused person who puts forward an alibi as an answer to a charge does not in law thereby assume any burden of proving that answer and it is sufficient if an alibi introduces into the mind of a court a doubt that is not unreasonable.

In the instant case, this defence is shattered by the evidence on record. Firstly, the evidence on record place the fight between the accused and

his wife from 5.30 p.m. Secondly, the evidence on record confirmed that his mother at the time implicated him in beating his wife and thirdly, his house was locked from outside and had to be forced open to access the body of the deceased.

11. There is no doubt that the accused beat his wife. Though his mother became uncooperative, evidence indicate that the deceased had at one point sought refuge in her house. I therefore make a finding that the accused fatally beat his wife.

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.

14. The prosecution adduced evidence of the fatal beating of the deceased by the accused. There was no evidence that was led to establish what caused the couple to fight. This could have assisted the court to either infer malice aforethought or lack of it. The prosecution did not establish this important ingredient in the offence of murder.

15. I find therefore, that the prosecution has not proved the offence of murder against the accused. However, the prosecution has 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 3RD DAY OF MARCH, 2020

KIARIE WAWERU KIARIE

JUDGE