



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CRIMINAL CASE NO. 24 OF 2016

REPUBLIC..... PROSECUTOR

VERSUS

SYLVIA OJIAMBO WANYAMA.....ACCUSED

JUDGMENT

1. **Sylvia Ojiambo Wanyama** 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 26th day of September 2016, at **Nasikina** village, **BUKHAYO WEST** location, in **BUSIA** County, murdered **Maurine Karani**.
3. The prosecution case is that the accused found the deceased in a salon and started to interrogate her as to why the previous day on seeing her, she went into hiding. The deceased denied the accusation. The accused went away briefly and returned while armed with a knife and fatally stabbed the deceased.
4. The accused did not tender any defence. She opted to exercise her constitutional right and kept mum.
5. The issues for determination are as follows:
 - a) Whether the deceased was identified;
 - b) Whether it was the accused who fatally stabbed the deceased; and
 - c) If the accused stabbed the deceased, whether this amounted to murder.
6. Dr. Sande Kahindi Charo (PW7) testified that he performed post mortem on the body of Maureen Maloba. The post mortem he produced identified the deceased as Maurine Narocho Maloba. The body was identified to him by Consolata Awino Abila (PW4) and Edwin Odunga (PW6) her husband. Though the name of the deceased in the charge sheet is indicated as Maurine Karani, I am satisfied that the deceased who is the subject of this case was identified.
7. The deceased was fatally stabbed in a salon. According to the evidence of Michael Barasa (PW1) the accused found him attending to the deceased in the salon. He knew the accused for he testified that she was the wife of his boss. She enquired from him if he knew the customer he was serving. The accused then asked the deceased as why she saw her the previous day and ran into a shop. An exchange over the identity of the person who ran away the previous day ensued. This was until he told the accused to let him continue with his work. The accused went out and returned with some vegetables in a paper bag. The accused stabbed the deceased on the left side as he worked on her. When he turned to the accused, the latter attempted to stab him but he was lucky the knife got his shirt.
8. Praxides Nasimiyu Busera (PW2) testified that the accused went to her with some vegetables in a paper bag and borrowed a knife from her. After a while, she heard an alarm being raised at the salon shop. She identified the knife she had lent to the accused. This is the knife that was used to fatally stab the deceased.
9. The subsequent action of the accused to go into hiding after the act further bolstered the evidence that she was the one who stabbed the deceased. According to the evidence of Francis Sebeya Odena (PW3) and Stephen Ouma Osige (PW5) they found the accused hiding in the house of Grace under a bed from where they arrested her. The prosecution proved beyond reasonable doubts that it was the accused who fatally stabbed the deceased.
10. Having established that it was the accused who fatally stabbed the deceased, the next issue to establish is whether this act amounted to murder. Murder is defined under section 203 of the Penal code as follows:

Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.

Section 206 of the Penal code on the other hand states:

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 prosecution must prove beyond reasonable doubts that the accused had malice aforethought when she stabbed the deceased.

11. The deceased was attacked with the knife as she was being attended to at a salon. Prior to being stabbed, she had denied that she was the person who ran away the previous day on seeing the accused. The accused went and borrowed a knife on pretext that she was going to cut her vegetables with it. Her attack on the deceased was vicious and a lot of force must have been used. The evidence of the doctor who performed the post mortem confirmed this fact. These were his observations:

There was a 2cm penetrating wound on the left side of the neck. The respiratory system, the trachea, had been severed. The left artery and external jugular were severed.

The preparation by the accused in borrowing a knife and the sheer force used point to the existence of malice aforethought. The prosecution therefore proved beyond any reasonable doubts that the accused had malice aforethought in stabbing the deceased.

12. From the foregoing analysis of the evidence on record, I find that the prosecution has proved beyond any reasonable doubts that the accused committed the offence of murder as charged. I find her guilty and accordingly convict her.

DELIVERED and SIGNED at BUSIA this 19th day of February, 2019

KIARIE WAWERU KIARIE

JUDGE