



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**CRIMINAL DIVISION**

**HIGH COURT CRIMINAL CASE NO. 95 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VS**

**PATRICK BAKARI MUTUA.....ACCUSED**

**JUDGMENT**

1. The accused Patrick Bakari Mutua was charged with offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.
2. Particulars are that Patrick Bakari Mutua on the 24<sup>th</sup> day of December 2014 at Munyone village, Makandune Sub-location in Imenti Central District (s/county) within Meru County murdered Amina Gakii.
3. The prosecution's case was that the deceased and accused who were cohabiting as husband and wife in Nairobi differed and the deceased decided to go back to her parents place in Munyone village where she arrived on 23<sup>rd</sup> December 2014.
4. When the mother of the deceased woke up from sleep the following morning on 24<sup>th</sup> December 2014 she found the accused seated on a bench within her home. That PW2 greeted the accused and served him with tea. That she left the accused with the deceased and their child while she went to fetch feed for the goat. That when she came back she told accused he could not be able to resolve their differences and the deceased called accused persons mother and reported accused had followed her. The accused persons mother pleaded with him to go back to Nairobi so the issue could be resolved after Christmas.
5. PW2 left alone at 1.40 pm to go for a group meeting and on return at 6.00 pm she found the daughter deceased herein had been strangled with wire and had died in the house.
6. PW2 said accused left with the deceased persons child after killing her. She said deceased had come from the bathroom when she was strangled.
7. PW2 called assistant chief as well as her daughter. PW1 and her son Morris and also raised alarm and neighbours came. PW2 said the accused used to fight with the wife for cruelty. PW2 said that after burial of the deceased she discovered accused had come to her home with a jerry can containing petrol and hid it under pumpkin leaves. It was taken by assistant chief to Karembeene police. She said she didn't find accused at home when she returned in the evening.
8. PW1, the deceased person's sister received phone call from the mother – PW2 reporting that Amina Gakii had died. She said the accused was cohabiting with the deceased in Kariobangi South estate in Nairobi with their son HK. That when accused murdered her sister and took away the child. PW1 was led by a friend to accused persons house in Kariobangi South and he was arrested by 2 police officers who accompanied him and child taken away.
9. Accused was detained at Buruburu police station and later escorted to Meru where he was charged. PW1 said accused and her sisters used to quarrel frequently and that he swore he would make sure she doesn't marry any other man if they separated. She said accused had threatened to throw their child who was 3 months old from apartment. She said accused had assaulted the deceased and she went and helped her go to the stage and she travelled home.
10. PW3 brother to the deceased said he woke up and found the accused seated on a bench near the kitchen on 24/12/2014 and he waved at him and started washing clothes. He said on the material day he was at home with PW2, Amina the deceased, HK (accused and deceased son) Lilian and James Mutuma.

11. He said he and Lilian went to the Market at about lunch time and left accused, Mutuma the deceased and HK at home. On return at 5.00 pm he heard screams at home and on reaching home he was told Amina had been murdered. That he entered the houses found the body lying on the floor on the house used by his sister as bedroom.
12. He reported at Kiamwi Police post and the police after contacting Mwenda called a vehicle from Kaguma Police station and the body was collected and taken to Meru Level 5 Hospital mortuary. He said the deceased had reported to him she wanted to separate from accused person. PW4 JM 6 years old child said he was at home with HK and HK's mother and accused. That HK's mother went to take a bath. That when mama HK came from the bathroom and entered the house, accused followed her and locked the door. That he left HK outside and went to call people. When accused entered and locked the house he said he went to call people from Zakayo's home to come separate mama HK and accused who were fighting in the house. He said he didn't get anyone at Zakayo's home and when he went back home he found accused and HK had gone. He also didn't see mama HK as she had been locked inside the house. He said when deceased went to the bathroom accused removed wire used to hold gutter to the roof. He said accused used the wire to tie mama HK neck. That he locked the house and started fighting with mama HK. PW5 said she was going to visit her cousin the deceased and on the way she met JM who told her he left the deceased fighting with accused, when she rushed home she didn't find accused but the deceased was lying dead in the house. That she called Obadiah Muturi who also came when Gakii didn't respond and he rushed to police station.
13. PW6 Dr. Simon Mwangi Munyoki produced post mortem report prepared by Dr. Mohamed Noor on the body of the deceased. He said there was a wire ligature around the neck. PW7 Chief Inspector Wilfred Mwangi testified that during the murder incident in 2014 he was OCS Gaitu Police Station in Meru Central S/County. He said he got information of murder from Cpl Ledude of Kiamuri police patrol base and in company of P.C David Wainaina proceeded to scene led by Cpl Ledude. He said body of the deceased was lying on its back. He said a wire was used to strangle the deceased. Members of deceased family told CIP Mwangi the suspect was one Patrick Bakari who was husband to the deceased. He said deceased had arrived on 23/2/2014 and accused arrived on 24/12/2012 at 6.00 am. He said accused on interrogation told him they didn't agree on who between him and the deceased would remain with their son and a fight ensued. That accused claimed that deceased bit him on the hand and he strangled her and pushed her to the ground in order to get hold of the baby.
14. He also admitted he locked the deceased in the house and went to Nairobi with the baby. Accused was arrested on 25/12/2014 by Administration Officers from Kariobangi South and detained at Buruburu Police station from where he was collected on 27/12/2014.
15. CIP Mwangi said the scene of crime officers P.C Cleophas Musinga took photographs before body was removed to the mortuary. He said the wire was removed from the deceased neck during post mortem. He said the wire was coiled tightly on the neck. He said accused claimed deceased bit his thigh but there was no bite mark on the thigh. He said there was no possibility that deceased inflicted the injuries on herself.
16. PW8 P.C Abraham Mbatha was at Kiamuri police patrol base when report of murder was made. He booked report and visited scene. He said the deceased who lay on the floor had a bruise below the knee cap on right leg and abiding wire around the neck.
17. She was strangled. PW8 made phone call to Gaitu Police Station and PW 7 CIP Mwangi came to scene in company of police driver and body was collected and taken to the mortuary.
18. That when accused was arrested by Administration Police from Kariobangi South on 27/12/2014 CIP Mwangi PC Juma, PC David Marete and himself went to collect him after which charge was preferred.
19. PW8 said when they visited scene, blankets and bed sheets were scattered on the floor indicating there was struggle in the house where the body lay.
20. At close of prosecution case accused was placed on defence and after it was explained to him how he could defend himself he said he was not going to testify.
21. However, later the same day his advocate requested the court to reopen the case for him to testify. When the accused gave his sworn testimony on 14<sup>th</sup> February 2019 he denied having committed the murder. He said that on 21<sup>st</sup> December 2014 he went to his rural home to look for househelp as his wife had a heart problem and could not do heavy menial work in the house.
22. That he returned to Nairobi with househelp on 23<sup>rd</sup> December 2014 but didn't find his wife. He learnt from a neighbour that his wife had gone to her parents home in Meru and she left instructions that he should follow her to her home in Meru.
23. That he decided to escort the househelp back to bus station to travel back home and he went and boarded a vehicle to Meru and he arrived in Mitunguu at 11.00 pm and hired a room to lodge.
24. The next day at 5.00 am he proceeded to his in laws home using a motorbike. When he arrived at 6.30 am no one had woken yet and he sat on a bench near the kitchen.
25. He said it is the motorbike he used that woke up the people at the home including his wife who was among the 1<sup>st</sup> to get out of the house. He said the deceased took him to the guest house where they sat for about 30 minutes before he saw the mother –in-law go to the kitchen followed by her sister.
26. Accused said he had tea in company of his brother in law, his wife, his son and JM.
27. He said that after breakfast the deceased persons mother and the sister to the mother in law and his wife sat with him and he was told by the mother in law that the deceased should not be married in Ukambani which had perennial drought and famine. When he asked why the

mother in law was separating him from his family and wanted to know the fate of his son, the mother in law said she was done and that accused should choose what was more important whether his son or the dowry.

28. That the mother in law told him to go with his son as he had no land to give him and her daughter would not be able to get married with a son. He said his mother in law and her sister left him and his wife and son HK at home together with JM. That the deceased took a bath and went to the bedroom to dress and escort him and the child, however when she came out of bedroom she had changed her mind about accused going away with the child. He said the child was crying and he asked the wife what would happen and she told him that he should know there were in Meru. That deceased went to the house and he followed her but met her at the door armed with an unidentified weapon in her left hand. That he pulled the door to restrain her from coming out as he feared she could harm him.

29. That he heard her lock the door from inside and told the accused that even if he went with child to Nairobi he would never see her again. He said that PW4 – JM saw and heard what happened and thought the accused and deceased were fighting but they didn't fight.

30. That after he closed the door he didn't find PW4 and he suspected he had gone to call people to come and harm him and he picked his child and left for Nairobi. That he got to Nairobi at 6.00 pm and the next day when the child was watching cartoon he heard a knock at the door and police entered and asked what he had done in Meru and he told them he had taken his child away. Accused said the police told him that his wife was found having committed suicide after he was left with her at home and that he was a murder suspect.

31. That he was taken to chief's office and later Mercy went and took the son. Accused send Mercy told him that Gakii the deceased herein had committed suicide. He was kept at Buruburu Police station and on 27<sup>th</sup> December 2014 he was escorted to Gaitu police station where he explained to the OCS what happened but the statement the OCS wrote didn't reflect what he said had happened. He said that he was made to sign a statement without reading.

32. In cross examination the accused said he had been married to the deceased for 6 years. He said the deceased told him in 2012 that she had a heart problem and he took her to Murugi's herbal Clinic at the OTC in Nairobi. He admitted none of the prosecution witnesses said the deceased had a heart problem. He said that deceased persons sister used to help her in the house and when she left he went to bring househelp from Mtito Andei. Accused said that he had not differed with the deceased.

33. Accused said that the evidence of JM was false as he was coached. He said it was possible the deceased committed suicide using a rope and the wire was put to fix him. He said there was no one at home when he left. The accused person written submissions were filed on 7<sup>th</sup> May 2019 and counsel submitted that PW1's evidence was hearsay and was contradictory and can't be admitted.

34. It was also submitted that PW4's evidence was inconsistent. It was submitted that he didn't explain why he didn't inform his grandmother what was happening at home where he had run from.

35. That PW4 waited for his mother PW2 to report much later at 1600hrs was termed by the prosecution as confused, incoherent and incomprehensible taking into account the fact that PW4 was a minor. It was argued that prosecution failed to place the accused at the scene of the crime. The accused persons submission was to the effect that no one saw accused commit murder and the mere fact he was not at home when PW2, PW4 and other members of family arrived and found the deceased lying dead in the house is not sufficient to implicate the accused.

a. The issue for this courts determination is whether prosecutions has proved:

b. Fact of death

c. Cause of death

d. Whether the death was caused by an unlawful action and/or omission.

36. Whether the unlawful action and/or omission was actuated by malice aforethought and the accused perpetrated the unlawful action and /or omission.

37. All the prosecution witnesses attested to the fact that the deceased died. The Post Mortem Report conducted on 29<sup>th</sup> December 2014 by Dr. Mohammed Noor established the cause of death as asphyxia secondary to ligature strangulation.

38. It is not in dispute that on the material day that the deceased was found to have been strangled the accused had followed her to her parents home. PW2 and PW3 found him at 6.00 am seated on a bench near the kitchen when they woke up. According to PW2 he wanted to reconcile with his wife the deceased and go back with her to Nairobi. PW2 said she could not resolve the dispute immediately and urged him to go away as she talked to the deceased.

39. The deceased called the accused persons mother and told her accused had followed her to her parents home. The accused person's mother told him to go back to Nairobi and wait for the matter to be resolved after Christmas.

40. PW2 left accused and the deceased at her home as she went for a meeting but on returning in the evening found she had been murdered.

41. The deceased person's brother also left the accused at home with the deceased and on the way back heard screams and he found his sister had been murdered and he reported to police.

42. PW4, 6 years old JM was left at home with the deceased and accused as well their son and he recounts that his aunt the deceased had gone to the bathroom to take a bath and when she returned and entered the house, the accused who had taken a binding wire holding the gutter to the roof followed her and immediately, locked the house from inside and he heard a struggle. He ran to Zakayo's home to go and call people to come separate his aunt from the accused but he didn't find anyone. On return he didn't find Hans and the accused but the house in which the accused and the deceased were struggling was locked from outside. The accused confirms the evidence of PW4 to some extent that he heard a struggle with the deceased at the door where the deceased had entered to change after coming from the bathroom and that when he had locked the door from the outside he did not see PW4. This is because PW4 said he had run to go to Zakayos home to call people to separate his aunt from the accused. The evidence of the accused and that of PW4 are also in agreement when there say that when PW4 returned the accused and the son were nowhere to be seen. It is not therefore true that the evidence of PW4 is confused, incoherent and incomprehensible as stated in the accused persons written submissions.

43. The accused person has claimed that it was possible that his wife committed suicide but PW4 said he saw the accused remove a binding wire holding a gutter to the roof and that when the deceased came from the bathroom, the accused followed her immediately and a struggle ensued in the house after the accused had locked the house from the inside. From evidence of CIP Mwangi PW7 and P.C Abraham Mbatha PW8 there were signs of a struggle inside the house where the deceased was found dead. The 2 officers said that on interrogation of the accused he said that the deceased had bit him on the thumb and/or thigh and that is why he strangled her in his defence. On arrest of the accused one day after he committed the offence no injuries whether of a bite mark or any nature were seen on his body. The accused person did not pursue this defence of self-defence when he was placed on his defence.

44. The body of the deceased was found lying on the floor half naked and the door was locked from outside. The binding wire was tightly coiled around her neck and was only removed during Post –Mortem Examination. It is not humanly possible for one to commit suicide by tightly tying their neck using a short binding wire with a knot at the back of the neck.

45. Both circumstantial and direct evidence from JM PW4 point to the fact that the unlawful actions of accused led to the death of the deceased.

46. The unlawful actions were actuated with malice. The tightening of the binding wire with a knot at the back was meant to ensure that the deceased died. The accused waited until only 2 minor vulnerable children were at home when he pounced on the unsuspecting wife when she was coming from the bathroom and with the use of a binding wire strangled her.

47. The accused person in his defence said that his wife had already dressed up and wanted to escort him with the son but changed her mind. From the scene of crime photographs produced herein the deceased body was half naked when she was found lying dead in the house having been strangled. The accused persons allegations are therefore not true .

48. The accused also claimed in his defence that it is the deceased who left instructions that he should follow her to her parents home but the evidence of the deceased persons mother PW2, brother PW3 and the sister PW1 is to the contrary. They said the accused and the deceased had differed severally and that the deceased came back home after they had domestic problems with the accused and one day after the deceased had arrived , the accused was found early in the morning at 6.00am seated on a bench near the Mother-in-laws kitchen. It was not put to them whether they initiated the coming of the accused to their home. The defence didn't also question PW2 on the allegations that she didn't want her daughter to marry the accused person. This court therefore finds that the allegations raised by the accused in his defence were an afterthought raised too late in the day to be considered in his favour and they are also not corroborated by any other independent evidence.

49. This court therefore concludes that evidence adduced by prosecution witnesses has proved all the ingredients of the charge of murder. The defence by the accused person is not truthful. The accused person is found guilty and he is convicted as per the Law under Section 215 C.P.C.

**HON. A.ONG'INJO**

**JUDGE**

**JUDGMENT SIGNED, DELIVERED AND DATED THIS 9<sup>TH</sup> DAY OF MAY 2019.**

**HON. A.ONG'INJO**

**JUDGE**

**In the presence:**

C/A:- Kinoti

State:- Ms Mbithi for State

Accused:- Present in person

Mr Nyenyire Advocate for accused

**Ms Mbithi**

I don't have records for accused. He can be treated as 1<sup>st</sup> offender.

**Mr Nyenyire in Mitigation for Accused**

Accused is remorseful. He is a family man with 2 children. We are praying for lenient with accused and if possible give non-custodial sentence.

**Order**

Accused Remanded in Custody for Victim Impact Statement on 6.6.2019

**HON. A.ONG'INJO**

**JUDGE**