



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CRIMINAL CASE NO. 81 OF 2015**

**REPUBLIC..... PROSECUTOR**

**VERSUS**

**MM.....ACCUSED**

**JUDGMENT**

1. The accused person, namely M M was charged with murder contrary to section 203 as read with 204 of the Penal Code, Cap 63 Laws of Kenya. Particulars of the Offence were that, on 1<sup>st</sup> November, 2015 in Imenti North Sub-county within Meru County murdered A G.

2. In support of the charge against the accused the state summoned 5 witnesses to prove their case that it was the accused who committed the murder.

3. The Prosecutions case was supported by the evidence of 5 witnesses. **PW1 FKM** was in class 2 when she testified on 1<sup>st</sup> March 2016 and told the court that, on 1st November 2015 she was in the shop with her mother who told the accused to buy credit which he went to buy. They closed the shop and they went home together with her mother. The accused asked mother where the keys were and mum said she did not have it. The accused took a water pipe and started beating mum. She couldn't remember the pipe that was used to beat mum. The accused then started to cut her mother with a panga which he managed to cut her right hand. Her mother fell on the carpet and there after the accused took mum to the bed. On that night her mother was taken to the hospital in a vehicle

PW1 said that she has not seen her mother since she was taken to hospital

4. During cross examination PW1 said that she does not know the reason that her father beat her mother but that she loves both her parents.

5. **PW2 STANELY KIMATHI** told the court that on 1<sup>st</sup> November 2015 the accused called him between 3:00-4:00pm and told him that his wife was sick and he wanted him to assist take her to hospital. He went to the accused place and on arrival he found him and his wife and C the sister of M's wife. The accused went to the main road to get a vehicle to take the wife to hospital. He went in company of a person he did not know. He remained with C and the accused's wife. When the accused came with a car, his wife was put in the car and taken to hospital. They went Meru police station and later to Meru level 5 hospital. M's wife was admitted and they went back to their respective homes. The next day he went to hospital to visit the accused wife and found she had been treated and given medicine.

6. **PW2** the following day learnt of her death and went and informed the accused who was at home. PW2 also recalled that he did not see any injuries on the deceased. He did not see any blood on her. When they took her to hospital she was able to walk on her own. The sister of the deceased insisted they should go through the police station because the deceased said the accused had a domestic fight. The accused did not tell him what was ailing the wife. When they told the accused about his wife's death he told him that he feared the wife's family and he decided to escape. He was arrested one day after he escaped.

7. **PW3 BM** testified and told the court that the accused is his brother. On 3rd November 2015 he received a phone call from someone from hospital, Meru level 5. He informed him that AG was at the hospital and had died. He left his place of work and proceeded to the hospital and found that the body had been taken to the morgue. He made a phone call to the accused. He asked where he was and he said he was at Gakurine. He proceeded to Gakurine and told him his wife had died. He told him that he should report to the police station however he did not. On the following day he went to look for his brother and traced him around 8:00 pm and accompanied him to the police station where he was booked. It was Stanley and M who reported to the police before they took the deceased to the hospital. He learnt that the accused and his wife had fought at home. The accused and A had a good relationship. He did not know why they fought.

8. **PW4 DR. MOHAMED NOOR** testified and told the court that he is a Medical Officer at Meru Level 5 Hospital where he has been working for the last 5 years. He presented the post mortem report filled in by Dr. Bett who was the Medical Officer at Meru Level 5 Hospital. He worked with Dr. Bett who is currently at Moi Teaching and Referral hospital for Post graduate studies. The body of AG was identified by

Susan Kaari and Johnson Kimathi. The findings were that there was bruises all over the body, abdomen, back, lower and upper limbs. There was a cut on head. There was sub cutaneous and ureteral muscular hemorrhage. There was also bleeding on the shoulder region. There was subcutaneous hemorrhage on both thighs. There was massive hemorrhage on abdominal wall, internal appendage. On the head, hemorrhage on scalp, cut wound on the scalp. The doctor concluded that death occurred due to sever hemorrhage due to assault

**9. PW5 IP PAUL MULEI** said that on 1<sup>st</sup> November 2015 through OB No.73 a report was made at Meru police station where he was stationed. It was 1:10 when the matter herein. 2015. On 1st November 2015 a report was made under O.B No. 73 of an assault at 19:40hrs by one CK who is the sister to the deceased. The report was that the deceased was assaulted on 31st October 2015 at around 1930 hrs, by her husband following disagreements. The disagreement was that the deceased and the the accused closed shop and the deceased sent the accused to buy credit cards for sale in the shop. He was to bring the credit cards in the evening when the husband came from Meru town he went directly past the shop to the house which is about 700 meters from the shop. The husband did not have keys and he was outside until the wife came. It was when the wife and their young daughter arrived that an argument ensued. That the husband was already infuriated and went to the kitchen and took a one litre bottle of highland containing water. He came back into the sitting room and pounded the water on the wife's head. It was during that time he also slapped her several times. That was not enough he went and took a hose pipe MFP2. The accused used the hosepipe to assault the wife additionally he also took a panga and used the flat point to assault the wife.

10. On 3rd November 2015 at 1200 hrs through OB38 another report was made at the station by Susan who reported that the deceased herein was undergoing treatment at Meru Referral hospital had succumbed to the injuries. On 4th November 2015 at about 0940 hrs vide OB 126 the accused was brought to the station by 2 gentlemen Bonface Mwiti and Stanely Kimathi. He was arrested by P.C Dennis Osolo. When the accused got informed that the wife had died he ran away to Nanyuki. The two relatives called him back and when he arrived in Nyeri the apprehended him and brought him to the station. On 9th November 2015 they got the keys to the house where the accused and the deceased were living. He also got the girl F who recorded a statement. After the recording of the statement he got information on the weapons used. F led them to where the weapons were and they recovered them. He also recovered some clothes that the deceased had won. They visited the mortuary and obtained copies of receipts and burial permit. After collecting all of the evidence the deceased was charged. He did not know the accused person prior to the case.

11. During cross examination PW5 said that when he interviewed the accused he said that his wife used to spend time at the pastors place and could even close the shop to go the church. The allegations by the accused were not investigated. There was an exchange of words and insults between the accused and the deceased. According to the statement of the accused the wife was not concentrating with her business. The accused said the wife called him a fool and he got annoyed. The accused said that he struggled to put up the shop for the deceased so as to support the family. After the fight the deceased remained in the house the entire day until Catherine came in the evening and took her to hospital. When C took the deceased to hospital she was not accepted until they reported to the police station.

#### **Defense Case**

**12. DW MM** the accused told the court that on 31<sup>st</sup> October 2015 he came from work and proceeded home. It was at 9:30 pm his wife had not arrived home by then. During the day his wife had sent him to buy for her credit cards for Kshs. 1500. He was busy the entire day and he forgot to buy the credit cards. He stayed for about 10 minutes before his wife arrived. She greeted him and asked for the credit cards. He told her he was very busy and forgot to buy the cards. She was not satisfied with his explanation and continued quarreling. He told her that he had forgotten and returned the money to her. His wife took the money and used it to hit him. He picked the money and placed it on the table. He asked why she hit him with the money and she continued quarreling. He stood up and he got angry so he went to the bedroom to sleep. She followed him and hit him with a cooking stick. He stood from the bed and held his wife and beat her. She went to the kitchen and came with a panga swearing to finish him. He struggled to disarm her of the panga and used it to beat her. He left her as he went to sleep. They woke up at 8:30 am and his wife told him that she was having a headache. He prepared tea and gave FK. Together with K they went to the shop to buy Mara moja for his wife. When he gave her the medicine she said that she wanted to take the medicine with milk. He went back to the shop to buy the milk. After she took the medicine she asked why I had beaten her and he told her it was because she wanted to kill him.

13. DW1 left his wife seated in the sitting room and left with K. They went to the shop to buy credit and returned to the house at 4:00 PM. His wife said that she was not feeling well and that he should take her to hospital. He went to the road and stopped a taxi which he used to take his wife to hospital. On the way to the hospital he made a phone call to his wife sister C and told her that her sister was sick and they were on their way to hospital. C came to the hospital and assisted him take his wife to the reception. He told the doctor that they had a fight at home. The doctor then told them that they had to report to the police first before his wife could be treated. They went to report the matter and returned to the hospital. His wife was attended to and then they left for home. At 12:30 am the doctor said that she would be admitted and after he went back home.

14. On 3rd November 2015 he woke up and prepared F for school. After taking his child to school he went back to the house. Later his brother BM and Stanely Kimathi came to his house and told him that his wife had passed away and his wife's family was looking for him. When his brothers left he locked himself in the house. At 6:00pm he called his brother and told him that he would rather present himself to the police.

15. At the close of defence case on 3<sup>rd</sup> June 2019 the defence was given 14 days to file written submissions but by 17<sup>th</sup> of June the submissions were not ready and further 7 days was granted. By the time of writing this judgment and even upto the date scheduled for delivery of the judgment the said submissions had not been filed. This court will therefore rely on the evidence on record for the prosecution and defence to determine whether the prosecution has established beyond reasonable doubt that the accused person committed the murder. To secure a conviction for murder, the prosecution must prove beyond any reasonable doubt as was held in the case **Nzuki vs Republic [1993] KLR 171** by the Court of Appeal that before an act can be murder it must be aimed at someone and in addition it must be an act committed with the intention to cause death or grievous bodily harm and it must be established that the accused knew that there is a risk that death or grievous harm will ensue from his acts and commits them without lawful excuse.

16. The fact of death of the deceased person is not disputed and the cause of death was established by Dr Bett as shown in the Postmortem report exhibit 1 which was produced by PW4 DR Mohamed Noor. The Dr. concluded that death occurred due to severe hemorrhage due to assault. The daughter of the accused and the deceased FK who was the only other person in the house at the time of the assault testified that

the accused used a water pipe to beat her mother and also used a panga to cut her and the deceased fell on the carpet. She said thereafter the accused carried the deceased to bed.

17. The accused person in his defence claimed that it was the deceased that started to quarrel with him to a point where she went to the kitchen and armed herself with a pang and came swearing to finish him. That he disarmed her and used the panga to beat her. The accused admitted that what the prosecution witnesses said was true but he did not intend to kill his wife. However, even after disarming the deceased the accused went further and beat her with the said panga. Later on the deceased succumbed to the injuries that the accused person inflicted on her.

18. In consideration that the fight and/or assault arose as a result of a disagreement over failure by the accused to buy credit cards and/or response by the deceased that she did not have keys to the house after she found the accused waiting for her at the house, this court finds that although the actions of the accused led to the death of the deceased there was no evidence that he had malice aforethought. The accused and the deceased had no history of domestic feuds that can make this court conclude that the accused had planned to terminate the life of the deceased. Consequently, I find that the prosecution has proved the offence of manslaughter rather than murder. Accused is found guilty of offence of manslaughter and he is convicted of the same.

**HON A. ONG'INJO**

**JUDGE**

**JUDGMENT DELIVERED, DATED AND SIGNED IN COURT ON 11<sup>TH</sup> DAY OF JULY 2019.**

**In the presence of :**

C/A: Kinoti

Accused: Present in person

Mr Otieno Advocate for accused person: Present in person

Ms Mbithe for State: Present in person

**HON A. ONG'INJO**

**JUDGE**

**Ms Mbithe**

I don't have accused persons records.

**Mr Otieno Advocate in Mitigation**

Accused is remorseful. He regrets his actions. Accused is the sole bread winner. He has 2 daughters in class 5 and form 3. The younger daughter stays with the accused. Accused has gone ahead to reconcile with the family of the deceased. I wish the court to consider conduct of the deceased and consider he is only 35 years. May the court consider non-custodial sentence.

Order

Accused remanded in custody pending Victim Impact Statement on 25.7.2019

**HON. A. ONG'INJO J**

**JUDGE**