



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 74 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

ROSE NJERIACCUSED

JUDGEMENT

1. **ROSE NJERI** ('the accused') herein has been charged with murder contrary to **Section 203 as read with Section 204 of the Penal Code CAP 63 of the Laws of Kenya**.
2. The particulars of the offence being that on the 14th day of January, 2015 at Maenyi village, Luciuti Location in Igembe North Sub – County within Meru County murdered KM ("the deceased"). The prosecution called seven (7) witnesses to establish its case.
3. **PW1 Joyce Nkoe** daughter in law to the accused and grandmother to the deceased who was 13 years of age told the court that on that material day she was in the shamba when the accused came chasing the deceased. She was hurling insults and threatening to kill him. She told the deceased to stop chasing the deceased and wait for his mother to report the issue. They passed her and went to Makena's home which is adjacent to her farm and separated by a barbed wire. The accused heard her and sat on the ground within Makena's home. But suddenly she stood up and again began to chase the deceased she told the accused again to stop. The child ran to the back of Makena's house and the accused followed. She went there from the opposite side. She saw the accused hit the deceased with the stone which made him fall on the road passing nearby.
4. She reached to where the deceased was and the accused held him telling him to stop pretending. She raised alarm and went to her house got some water to give the deceased but he could not drink. She continued to scream and Angelina Makena and Rose Kangai came to the scene. The accused ran away and left the scene when she saw that the deceased was unconscious. People came who took the child to the mother's house and she went home.
5. **PW2 Patrick Ntonjera** father of the deceased stated that the accused is his sister in law as she is a wife to his cousin. That on the material day he was at the market when Rose Kangai came and informed him that the accused had killed his son. He was together with the husband of the accused. They went to the scene where they found a crowd and the child was already dead. They took the child home which was about 200 – 300 meters away and reported the matter at Laare Police Station. He identified the body of the deceased for post-mortem at Meru Level 5 Hospital.
6. **PW3 Mercy Kendi** mother of the deceased stated that he was his first born son born in 2003. That on 14th January 2015 she received a phone call from **PW2** who informed her that the accused had chased their child who fell and died. She was not told if the accused had hit the child with a stone. She went home where she found a crowd and the body of the deceased. The body was collected by the police at about 8.00PM. The next day they recorded statements. She heard that the accused had quarreled with the child and threatened to kill him.
7. **PW4 Dr. Jackline Wendo** produced the post mortem report. She stated that the body had a right facial swelling and bleeding from the nose, mouth and ears. Also, on the head there was a base of the skull fracture. The external appearances occurred at the time of death. The cause of death was concluded as cardiopulmonary arrest secondary to base of skull fracture.
8. **PW5 Rose Kangai** was declared a hostile witness for she stated that she did not record a statement but the name in the statement is hers. She testified that the deceased was a son to her husband's brother. That on the material day she was at home with her children when she heard screams. She went to the scene and found that everything was over. She found neighbors who told her that the accused chased the deceased who died. She did not find **PW1** or the deceased at the scene. She went home and left the neighbours talking. (*Court noticed that the witness was not candid*).
9. **PW6 Angelica Makena** testified that on 14th January 2015 she had gone to fetch grass for her cows and on her way back she heard

screams. She kept the grass at her home and proceeded to where the noise emanated. The scene was on the road three parcels away from her house. She found many people and a child was on the ground. Among the people there was **PW1**. She saw the deceased's injury on the head. She did not find the accused at the scene. The parents of the child were at the scene as well. She was informed that the deceased fell when the accused chased him. Thereafter she went to her home.

10. **PW7 No. 91982 P. C Daniel Kiptanui** stated that he took over the file from P. C Hillary Kepangeno and came into the matter on 16th October 2016 when the accused was arrested. He testified that on 14th January 2015 at around 6.00PM a report was made by **PW2** that the deceased was chased by the accused and in the process he fell down and died. According to **PW1** is that the accused threw a stone at the deceased and it hit him and he fell down. He established that statements had been recorded and proceeded to compile the file and preferred a charge of murder.

11. At the close of the prosecution's case the accused gave a sworn testimony. **DW1 Rose Njeri** told the court that on the material day she was at home with her children. She was also taking care of the deceased and his siblings as their mother was at the farm. When the deceased and his brother Phineas came from school she served them porridge. While in the house Phineas came and reported to her that the deceased was beating them. She warned the deceased and when she opened to go out to stop him he ran away towards the road but she did not go after him. She went back to the house and continued giving her child porridge.

12. After 10 minutes she heard screams and when she got out she found that it was Kendi and Nkatha, cousins to her husband, were screaming. They told her that they found the deceased had fallen. She went to the scene and found the deceased lying down on the road. She observed that his body had a bruise on the forehead and when she raised him he did not talk. She also started screaming and neighbors came. **PW1, PW2** and her husband came. The child was taken on a *boda boda* to the hospital but then they came back when the child died on the road. She remained at her matrimonial home until one year later when she was arrested. She asserted that she had no reason to kill the deceased. She had no problem with **PW1**.

13. At the close of defence case on 9th July 2019 the defence was given time to file submissions but they were not ready by 23rd July and they were given a further 14 days to do so before the date for Judgment on 17th October 2019. However, by the time of writing this judgment no such submissions had been filed. This court therefore is to consider the evidence on record for the prosecution and the defence to determine whether the prosecution has proved beyond reasonable doubt that the accused committed the offence of murder. The offence of murder is defined under **Section 203 of the Penal Code** as:-

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

Thus, the four ingredients that need to be proved by the prosecution beyond reasonable doubt in order to prove this charge are:

a) The fact of the death of the deceased

b) The cause of such death

c) Proof that the deceased met his death as a result of an unlawful act or omission on the part of the accused persons, and lastly

d) Proof that the said unlawful act or omission was committed with malice aforethought

14. Regarding the first issue of death the prosecution witnesses and the accused confirmed that Ken Munene 13 years old boy died and Patrick Ntonjira and Stanly Miriti identified his body for pathology by Dr. Paul Wambugu on 26th January 2015. On the second issue, that is the cause of death **PW4 Dr. Wendo Kubai** produced the Post-mortem report in which the cause of death was established as cardiopulmonary arrest due to base skull fracture. **PW1** testified that it is the accused who was chasing after the deceased and even when she told her to stop the accused person persistently chased the deceased upto the road and **PW1** saw her hurl a stone at the deceased after which the deceased fell. **PW5** said in cross-examination that although she didn't see the accused run after the deceased she proceeded to the road where the deceased had fallen and died and she was told by Kendi Koome and other neighbours that the accused was chasing the deceased and that he had died. **PW6 AngELICA MAKENA**, said that she had come from fetching grass for her cows when she heard screams and when she proceeded to where the noise was coming from she found many people at the scene and a child was lying on the road. She identified the child as Ken Munene and she said that **PW1** was also at the scene. And she said she didn't see the accused at the scene. She also said that she was told that Ken fell and died when Rose the accused was chasing him.

15. From the evidence of **PW1** and that of **PW5** and **PW6** it can be concluded safely that had the accused not pursued the deceased he would not have fallen and the fact that he suffered a fracture at the base of the skull on the nervous system is evidence that he was hit from behind and not that he merely fell. The fracture at the base of the skull on the nervous system could not have been occasioned by a fall. This court therefore believes the evidence of **PW1** that the accused hit the deceased with a stone and **PW4** confirmed that a blunt object could have caused the fracture.

16. Whether the accused persons action of pursuing the deceased and hitting him with a stone was actuated with malice aforethought. The evidence of **PW1** stated that she saw the accused chasing after the deceased while hurling insults and threats to kill. She asked her to stop chasing him and wait for the mother of the child. The accused stopped but again began to chase the deceased and she saw her hit him with a stone. When she got to the scene the accused was holding and telling the child to stop pretending. When the accused realized that the child was unconscious she ran away. The accused person stands in the position of a parent to the deceased and the fact that she continued pursuing him even when **PW1**her Mother in law tried to restrain her did not auger well. From the evidence of **PW6** the accused persons home to the road where the deceased fell and died is quite some distance and it is a sign that she was hell-bent to execute a malicious intention. She ran after the boy passing several homes and parcels of land with the intention of catching up with him and teaching him a lesson and/or

executing the threats that PW1 said she had made.

17. According to the mother of the child, **PW3** is that on several occasions the accused would quarrel with her children. Whenever she asked the accused she would deny and say that she would not repeat. A day before, on 13th January 2015 the accused alleged that the deceased had uprooted a pumpkin from her farm. When she asked the deceased he said that he was not the one. Before she left the accused swore that if she knew the person who uprooted her pumpkin she would kill them. PW3 told the police that the accused quarreled her children frequently.

18. The accused persons defence that the deceased ran away when she opened to go and stop him from beating his siblings is an afterthought. This incident happened during the day and when she realized the deceased had died and she was only arrested and arraigned in court over one year later on 27th October 2016. The accused confirmed that she had no differences with PW1 her mother in law and there was therefore no reason why she would have fabricated her if the deceased fell on the road without the accused chasing him. The accused confirmed that PW1, PW2 and PW5 as well as her husband were at the scene. She did not call any witness or adduce any evidence to corroborate her defence which in my opinion is an afterthought.

19. Accordingly, I am satisfied that the prosecution has discharged its burden and proved its case beyond reasonable doubt. The accused be found guilty of the offence of murder contrary to **Section 203 as read with Section 204 of the Penal Code CAP 63 Laws of Kenya** and she is convicted under S. 322 of Criminal Procedure code.

HON A. ONG'INJO

JUDGE

JUDGEMENT DELIVERED, DATED AND SIGNED IN COURT ON 16th DAY OF OCTOBER 2019.

In the presence of :

C/A:

Accused :-Present in person

State:- Ms Mbithe for state

Defence Counsel:-Mr Igweta holding brief for Harun Gitonga Advocate for accused.

Ms Mbithe: I pray for copy of Judgement . I pray for time to get records for accused.

Order: Mention 8.11.2019 for Records, Mitigation and Victim Impact Statement.

HON A. ONG'INJO

JUDGE