



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**CRIMINAL CASE NO. 28 OF 2012**  
**REPUBLIC ..... PROSECUTOR**  
**VERSUS**  
**AMOS KIMUTAI ROTICH ..... ACCUSED**  
**JUDGMENT**

The accused **AMOS KIMUTAI ROTICH** faces a charge of **MURDER CONTRARY TO SECTION 203 as read with SECTION 204 OF THE PENAL CODE**. The particulars of the charge were that

**“On the 16<sup>th</sup> day of April 2012 at Keringet Shopping Centre in Kuresoi District within Nakuru County murdered L C”**

The accused pleaded ‘**Not Guilty**’ to the charge and his trial commenced before **Hon. Justice Anyara Emukule** on 13/3/2013. The Hon Judge heard the evidence of all eleven (11) prosecution witnesses and placed the accused on his defence. Thereafter the Hon. Judge was transferred to the Mombasa High Court. At that point I took over the case and recorded the defence of the accused.

The brief facts of the prosecution case are as follows. The accused and deceased were said to be lovers who cohabited at the Keringet Shopping Centre **PW2 C C** a minor aged 9 years told the court that the deceased was her aunt. On 16/4/2012 **PW2** was visiting the deceased at her house in Keringet. On the material day she was outside the deceased’s shop playing with the deceased’s young child called E. The accused came carrying a black paper bag. He showed the deceased the contents of the paper bag. Then **PW2** heard the deceased cry out ‘**mati baran**’ which means ‘**Do not kill me**’ in Kalenjin. **PW2** then saw her aunt fall to the ground with blood flowing from her stomach. The little girl picked up the deceased’s child and ran to the neighbours to seek help.

**PW3 WESLEY KIBET KEMBOI** told the court that he was a shop keeper in Keringet town whose shop was next to the shop operated by the deceased.

On 16/4/2012 as he was standing in front of his shop **PW3** saw the accused come to the deceased’s shop. The two spoke briefly and then both entered the shop. **PW3** then heard the deceased give a mournful scream and accused left the shop. The deceased shouted to **PW3** not to let the accused escape as he had stabbed her. **PW3** ran after the accused who was carrying a paper bag.

**PW4 ABIGAEL CHERONO** told the court that she too runs a business at the Keringet Centre. On the material day she was seated outside her shop when the accused who was carrying a blood stained knife and was being chased ran into her house and locked himself inside. Accused was later apprehended and

handed over to the police.

Meanwhile the deceased who had been critically injured was rushed to a nearby hospital where she unfortunately passed away. Police began investigations into the matter. The accused was eventually arraigned in court and charged with the offence of murder.

At the close of the prosecution case the accused was found to have a case to answer and was placed onto his defence. He gave a sworn defence in which he categorically denied having stabbed and killed the deceased. This court must now consider all the evidence on record and make a determination as to whether the charge of murder has been proved beyond reasonable doubt.

The offence of murder is defined by Section 203 of the Penal Code thus

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

The prosecution therefore must tender evidence to prove beyond reasonable doubt the following key ingredients of the charge of murder.

1. The fact as well as the cause of the death of the deceased.
2. Proof that the deceased met his/her death due to an unlawful act or omission on the part of the accused.
3. Proof that said unlawful act or omission was committed with malice aforethought.

Regarding the fact of the death of the deceased there can be no controversy. There are several witnesses who saw the deceased lying mortally wounded outside her shop. **PW5 R K** and **PW9 S K Kare** both brothers to the deceased. They confirmed having attended the autopsy and identified the body to the doctor. All the witnesses who knew the deceased person well identify her as ‘**L C**’.

Similarly I am satisfied that the cause of the deceased death has also been proved. The prosecution witnesses all testify that the deceased met her untimely death due to being stabbed. **PW1 DR. TITUS NGULUNGU** in his evidence confirms that he performed an autopsy examination on the body of the deceased. **PW1** observed stab wounds on both the anterior and posterior aspects of the chest – a total of five (5) stab wounds. The pathologist concluded that the cause of death was **“severe chest organs injury with massive hemorrhage attended by stab wounds to the chest wall, lungs and heart”**. The doctor found these injuries to be consistent with multiple sharp force trauma to the chest eg. Stabbing. I therefore find as a fact that the deceased ‘**L C**’ met her death as a result of having been stabbed multiple times in the upper torso.

The next question is whether it has been sufficiently proved that it was the accused who stabbed and killed the deceased. **PW2** a minor niece to the deceased told the court that on the material day she was outside the shop of the deceased playing with the deceased’s son called ‘**E**’. **PW2** stated that she saw the accused whom she refers to as ‘**Amos**’ come and enter the deceased’s shop. At the time accused was carrying a black paper bag. After a while **PW2** heard the deceased shout ‘**Mati Baran**’ which in Kalenjin means ‘**Do not kill me**’. The child ran and entered the shop where she found the deceased lying with blood coming out of her stomach. The accused meanwhile ran away. **PW2** also ran to the neighbours to request for a mobile phone to enable her phone her mother.

**PW2** though a minor gave a clear and concise evidence. She could clearly recall the events and even mentioned that the incident occurred on a Wednesday. She was able to identify the accused by his name ‘**Amos**’ and she pointed him out to the court. The accused was obviously a man whom the child knew well. The incident occurred at 10.00am in broad daylight and visibility was good. **PW2** remained unshaken under cross examination.

The testimony of **PW2** was corroborated by the evidence of **PW3** '**Wesley Kibet**' who was also present at the shopping centre at the material time **PW3** told the court that he was outside his shop which was adjacent to the shop of the deceased. He saw the accused whom he knew by appearance come and talk to the deceased. The two entered the deceased's shop then **PW3** heard the deceased emit a mournful scream. The accused then emerged from the back door followed by deceased who fell to the ground. The deceased then said to **PW3**

***“Do not leave that man he has stabbed me with a knife”***

**PW3** then chased the accused and noticed that he (accused) was carrying a paper bag. The accused ran and hid in the house of one Abigael.

**PW3** confirms that the incident occurred at 10.00am in broad day light. He too positively identified the accused before court. **PW3** stated that the accused was **“a man I know physically”**. Like **PW2** this witness gave clear and concise evidence and he too remained unshaken under cross-examination by defence counsel.

**PW4 ABIGAEL CHERONO** told the court that on 16/4/2012 at about 10.00am she was basking in the sun outside her house at the Keringet Centre. She saw a man carrying a paper bag run into her house. The man locked himself inside the house. **PW4** went and asked the man why he had locked himself inside her house. He told her to go and call the police as he had beaten up a lady.

**PW4** also identifies the accused as the man who ran and locked himself in her house. She further confirms that she saw **PW3** chasing that same man. I have no doubt in my mind that the man who was with the deceased at the moment when she was stabbed is the same man who took to his heels and ran into the house of **PW4** being chased by **PW3**. **PW10 NANCY KIRUI** states that on the material day she saw the accused run into the house of '**Abigael**' holding a blood stained knife. She too identifies the accused to the court.

The chain of evidence is complete. At no time did any of the witnesses lose sight of the accused. The incident occurred in broad day light thus they were able to see him well and the accused remained inside the house of **PW4** until the police came. **PW6 HILARY KIPRONO SIELE** told the court that on the material day at about 10.00am he went to the deceased's shop to buy a piece of soap. Upon arrival he found the accused alone in the shop with the deceased. Accused was showing the deceased the contents of a paper bag he was holding. The two were in deep conversation so **PW6** left without buying the soap. Thus **PW6** confirms that the only person who was inside the shop with the deceased in her shop at the material time was the accused. No other person was present. In the circumstances I find that there exists no possibility of a mistaken identity.

Although there was no witness who specifically testified to having seen the accused plunge the knife into the deceased the circumstantial evidence points squarely at the accused and at no other person as the perpetrator of the offence. There is evidence that the accused went to the deceased's shop on the material day. He spoke with her and the two entered the shop together. No other person was inside the shop as **PW2** was playing with the deceased's child outside. **PW6** found them together in the shop. The accused was later seen running out of the shop. The deceased emerged having been fatally injured and collapsed bleeding on the ground. The only person therefore who could have stabbed the deceased was the accused person.

**PW11 CORPORAL RICHARD MAINA** was the officer who went to the scene and found the accused hiding inside the house of **PW4**. The witness stated that the members of public who were highly charged wanted to lynch the accused and demanded that police surrender him to them. **PW11** told the court that the accused informed him where he had hidden the knife and police did recover the blood-stained knife the next day hidden inside a blanket. **PW11** who recovered the knife produced it in court as an exhibit **Pexb 2**.

The knife was taken to the government chemist for analysis. **PW13 LAWRENCE MUTURI** was the

government analyst. He told the court that he received the knife in question together with a sample of the deceased's blood. He conducted a comparison and analysis from which he concluded that the DNA profile generated from the blood stains on the knife matched the DNA profile generated from the sample of the deceased's blood. This is incontrovertible proof that this was the very knife that was used to stab the deceased. It cannot be mere coincidence that a recovered knife having been hidden by the accused is the very knife which was used to stab the deceased. This fact reinforces the evidence of the prosecution witnesses and provides further proof of the fact that it was the accused who stabbed and killed the deceased.

In his defence the accused totally denies any involvement in the murder of the deceased. He states that on the material day he was helping his mother at her shop. The accused further states that he knew the deceased as a customer in his mother's shop and nothing more. This defence in my view amounts to a mere denial. A total of five (5) witnesses have testified to having seen the accused enter the deceased's shop on the material day. These witnesses were in no way related to each other. There is no evidence that any of the five witnesses had a grudge against the accused. They had no reason nor motive to gang up and lie against the accused. **PW11** was the officer who found the accused hiding inside the house of **PW4** and rescued accused from the mob who wanted to lynch him. **PW11** had no reason to identify the accused as the man he arrested if that were not the case. Whilst accused denies that the deceased was his girlfriend, several witnesses including **PW5** a bother to the deceased confirm that the accused was a boyfriend to the deceased who often stayed with her in her house at the Keringet centre. The evidence placing the accused at the scene is overwhelming. His defence as stated earlier amounts to a mere denial and I do dismiss it as such.

From the evidence on record, I am satisfied that it has been proved beyond reasonable doubt that it was the accused who unlawfully stabbed and killed the deceased and I do so find.

The final ingredient of a murder charge is 'men rea' which is described in law as '**malice aforethought**'. Section 206 of the Penal Code, Cap 63, Laws of Kenya defined malice aforethought in the following terms:-

***“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 so a 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 persons whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is cause or not, or by a wish that it may not be caused***

***c. ....***

***d. ....”***

In this case as per the post-mortem report, the deceased died as the result of multiple stab wound to the back and front of her upper torso. This was a viscous attack on an unarmed woman. The accused did not just stab the deceased once, he stabbed her several times. He could have had no intention other than to kill or to grievously injure the deceased. I am satisfied that the accused acted with malice aforethought in terms of Section 206(a) of the Penal Code. I find that the *mens rea* for the offence of murder has been proved.

Finally I deem it pertinent to comment on the mental state of the accused. At no time during the trial was it alleged that the accused had a diminished mental capacity. However on 26/10/2016 when he appeared to give his defence, the accused appeared worried and depressed. Based on this observation I directed that a mental assessment be conducted upon the accused. The report dated 18/11/2016 and filed in court on

the same date indicated that the accused was examined and was found to be mentally sound and fit to stand trial. I therefore find that the accused suffered from no mental incapacity that would have prevented his forming the necessary *mens rea* for murder.

Based therefore on the foregoing I am satisfied that this charge of murder has been proved to the standard required in law. I therefore convict the accused as charged.

**Dated and delivered in Nakuru this 6<sup>th</sup> day of February, 2017.**

Mr. Obuto for Accused

**Maureen A. Odero**

**Judge**