



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 80 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

MARGARET NDUNGE MUTUA.....ACCUSED

JUDGEMENT

Background

Margaret Ndunge Mutua, the accused in this case, is charged with murder contrary to section 203 read with section 204 of the Penal Code. The particulars of the offence are that on the 2nd day of October 2012 at Mailisaba Village in Nairobi District within Nairobi Province murdered Jackson Kimeu (*sic*). The accused is represented by Mr. Solomon Wamwayi, advocate. Mr. Okeyo, prosecution counsel, commenced the prosecution of this case. Ms Ikol, prosecution counsel, took over and concluded the prosecution. The accused was arraigned in court on 4th October 2012 but the plea was not taken until 12th October 2012. Hearing of the case did not start until 3rd December 2014. The reasons for the delay in hearing this case include an offer for a plea bargain which the State took time to accept. This offer was finally abandoned and the case proceeded to full hearing.

The case for the prosecution

The prosecution accuses Margaret Ndunge Mutua of the murder of her husband Jackson Kimeu. In support of that charge the prosecution called seven witnesses. Philip Munyambu Mwathe, PW1, was related to the deceased as his nephew. He told the court that he was called by one Peter at around 10.30pm on 2nd October 2012 and informed of a confrontation between the deceased and the accused. In company of Peter they went to the home of the deceased. On arrival, they found the deceased had been stabbed on the leg below the knee at the back of the leg. They found the deceased alive but unable to talk. They found the accused cleaning the blood from the floor of their house. The deceased was taken to Mama Lucy Hospital in Umoja where he died while undergoing treatment. The body was removed and taken to the City Mortuary.

Samson Nyaga Rufus, PW2, was a neighbour to the accused and the deceased. He testified that on 2nd October 2012 around 11.30pm he was in his house at Mailisaba when he heard screams from the accused a neighbour who lived 50 metres from PW2. He went to the place and on entering the house he found the deceased had been stabbed on the left leg and was bleeding profusely. He told the court that he found the accused giving the deceased first aid by tying a piece of cloth (*leso*) on the wound to stop the bleeding.

The matter was reported to the police at Mowlem Police Post in Dandora the same night. At about 1.30am CIP George Anyonje, PW5, the OCS at the Police Post visited the scene in company of other officers.

They found members of public surrounding the accused's house threatening to lynch her. The accused had locked herself inside the house. A knife alleged to be the murder weapon was recovered from inside the house. PW5 observed blood stains on the bed sheets and on the floor. The scene was photographed. The photographs were exhibited in court and showed bloodstained clothes soaked in a plastic basin; bloodstains on the floor of the house; bloodstained knife and the stab wound on the deceased's leg.

The case was handed over to PC David Kagunda, PW7, to investigate. He recorded statements from witnesses; booked for the post mortem examination and escorted the accused for mental assessment. After concluding the investigations, PW7 preferred murder charges against the accused.

The doctor who performed the post mortem, Dr. Joel Mungai, PW4, found one stab wound on the left leg over the back of the knee. The wound according to PW4 was deep and penetrated all the way to the knee joint. It had been stitched. He found the body pale due to loss of blood. He formed the opinion that the cause of death was severe blood loss due to the stab wound. The body was identified to him for purposes of post mortem examination by the deceased's brother David Mwanja Nzuvu, PW3.

Defence case

In her defence given without taking the oath, the accused told the court that on 2nd October 2012 she spent the day at home doing household chores until 3.00pm when her child came home from school. They attended a church service and returned home to help her son do his homework. She said that she cooked and fed him and after putting him to bed she waited for her husband the deceased to return home so that they could have dinner together. She said that her husband had attempted to reach her several times when she was in church but she could not answer the phone which she had put on silence. She said that her husband came home around 11.00pm and on opening the door for him he entered and closed the door with a bang. She asked him why he closed the door with such force to which he answered her rudely and accused her of failing to receive his calls; that he slapped her on the face and kicked her on the stomach; that he pulled her hair and threatened her with a knife; that she screamed and struggled to snatch the knife from him; that in the course of the struggle both of them fell and when she tried to stand up she saw blood; that she realized her husband had been injured on the leg and was bleeding; that she screamed attracting neighbours; that she took a *leso* and tied it round the wounded leg. She further testified that her late husband was taken to hospital where he died while undergoing treatment. She denied stabbing her husband.

At the close of the defence case, Mr. Wamwayi submitted that the prosecution had failed to establish malice aforethought on the part of the accused; that the stabbing occurred as a result of a fight between the accused and the deceased and there was no intention to cause the death of the deceased. He further submitted that the doctor who performed the post mortem confirmed that the deceased died from a single stab wound. Counsel urged the court to find that a charge of murder has not been established and ought to find that a charge of manslaughter has been proved.

The State maintained that the prosecution has proved murder beyond reasonable doubt and that the court must find the accused guilty as charged.

Analysis and determination

For the prosecution to prove the accused guilty as charged there must be evidence proving beyond reasonable doubt that the accused caused the death of the deceased by unlawful act or omission with malice aforethought. Malice aforethought is the intention to cause the death of, or grievous harm to another person. I have no doubt in my mind that the deceased died and that his death was unlawful. The evidence on record confirms this happened. Dr. Mungai conducted post mortem examination on the body of the deceased and confirmed the injury as described by the PW1 and PW2 who had visited the scene and found the deceased bleeding from the stab wound and the accused cleaning the blood off the floor. The doctor confirmed cause of death was due to excessive loss of blood as a result of the stab wound.

On the identity of the person who caused the death of the deceased, evidence shows that there was no

other person in the house save the two and their child as per the evidence of the accused. There is evidence from both the prosecution and defence that the couple had a confrontation prior to the stabbing. PW2 heard the accused screaming and on arrival at the deceased's house he found the accused assisting the deceased who was profusely bleeding from the stab wound. I have considered this evidence and the defence evidence that they fought and in the cause of the fight the deceased was injured. Although she denied stabbing her husband, it is my considered view, after analyzing all the evidence that she is the one who stabbed her husband on the leg. According to Dr. Mungai he found a stitched left "**lateral popliteal area**". In his evidence the doctor described this area as the "**left outer back of the knee**". In my layman understanding, this is the area at the back of the leg above the knee joint. In my view we do not need any expert to note that it may not be easy for someone to inflict such an injury on himself. It is noteworthy that the wound was deep. Dr. Mungai told the court that "**the wound was deep all the way to the knee joint**". On this issue, I find that I harbour no doubts in my mind that the accused inflicted that wound on the deceased.

Finally, on the issue of malice aforethought, I have noted the evidence of the accused and that of PW2 who heard her screaming before going to the scene. PW2 further told the court that he found the accused giving the deceased first aid by attempting to stop the bleeding. After due consideration of the circumstances surrounding the stabbing of the deceased, I find that I agree with the defence counsel that malice aforethought on the part of the deceased has not been established. Consequently, it is the finding of this court that the prosecution has failed to meet the threshold in proving murder beyond reasonable doubt. My considered view is that the accused is not guilty of murder and I hereby acquit her of the murder charge. Instead, I find the crime of manslaughter has been proved beyond reasonable doubt and I hereby convict her of manslaughter. It is so ordered.

Dated, signed and delivered this 1st day of October 2015.

S. N. MUTUKU

JUDGE

In the presence of:

Ms Ikol, prosecution counsel

Mr. Solomon Wamwayi, defence counsel

Ms Margaret Ndunge Mutua, accused

Mr. Daniel Ngumbi, Court Clerk