

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KENYA**  
**CRIMINAL CASE NO. E001 OF 2022**

**REPUBLIC.....PROSECUTION**

**VERSUS**

**DAVID KAMORE**  
**MUGO.....ACCUSED**

**JUDGMENT**

1. The accused person herein is charged with murder contrary to section 203 as read with Section 204 of the Penal Code.
2. Particulars of the offence are that, the accused person on 19th day of December, 2021 at Nyairobi Village in Liloche Location, Kipkelion Sub County within Kericho County murdered **Ruth Wanjiru Kamore**.
3. The accused person pleaded not guilty to the charge and the prosecution called six (6) witnesses to prove its case.
4. **PW.1** a daughter to the deceased and accused, testified that on the material day, she was in their homestead when she heard her mother (the deceased) screaming, she went to her mother's bedroom and found her mother holding her

stomach and her father (the accused) was seated on the bed looking confused and disoriented. She testified that her mother was taken to Fort Tenan for medical treatment and later transferred to Kericho County Referral Hospital for further treatment where she succumbed. She further testified that her father fainted and he was taken to Fort Tenan Hospital for medical treatment. On ***cross examination, Pw. 1*** confirmed that she did not know what happened, she did not see her father with any weapon or could not tell how her mother had sustained the fatal injury that culminated in her demise.

5. ***PW.2*** a neighbour testified that on the material day, she heard some screams from the homestead of the accused, she went and found the deceased who was lying down, holding her stomach and told her that she had been stabbed. She testified that she hailed a motorcycle which took the deceased to Fort Tenan Hospital for medical treatment and that she was later transferred to Kericho County Referral Hospital for further treatment where she succumbed. On

**cross examination, Pw. 2** confirmed that on the material day, the deceased told her that the accused had stabbed her. She confirmed that she did not enter the house which was the crime scene and therefore did not know what weapon was used to stab the deceased.

6. **PW.3** a son to the deceased and accused, testified that on the material day, he was within the homestead, when he heard screams from his father's house, he ran there and found his father standing by the door and making guttural groans and his mother was lying down outside bleeding from the side of the stomach. He testified that soon after his father fainted and that neighbours took his parents to hospital for treatment. He further testified that whereas his father was discharged, his mother remained in hospital and she subsequently succumbed to her injuries. On **cross examination, PW.3** confirmed that he did not know who had stabbed his mother.

7. **PW.4** testified that on the material day, he received a call and was summoned to the homestead of the accused. He

was informed that the accused had stabbed the deceased. He testified that when he arrived at the homestead, he found that both the accused and deceased had been taken to Fort Tenan Hospital for medical attention and the children who were in the homestead informed him that the accused had stabbed their mother with a knife. He stated that the accused and deceased were members of his church and that he was not privy to any disagreement between the accused and the deceased. On **cross examination, PW.4** confirmed that the knife used to stab the deceased was never recovered.

8. **PW.5** a medical doctor based at Kericho County Referral Hospital testified that he conducted an autopsy on the body of the deceased and formed the opinion that the cause of death was heavy blood loss due to a stab wound and produced the post mortem report as **PExh.1**.
9. **PW.6** the investigating officer (I/O) attached to DCI Kipkelion testified that he received a murder report from Nyairobi Police Patrol Base and was informed that one Ruth Wanjiru

Kamore who had been admitted in Kericho County Referral Hospital had succumbed to the injuries she had sustained. He testified that he and a colleague proceeded to the Police Base and found that David Kamore, the accused herein, had been arrested. He testified that he was accompanied by several colleagues to the homestead of the accused and found that several people had gathered at the homestead. He testified that they interrogated some of the people who were present at the time of the incident who gave a similar account of the events of the material day. He testified that a post mortem on the body of the deceased was conducted on 21.12.2021 and the findings were that the deceased had been stabbed on the left side of her ribs. He testified that their investigations revealed that the couple had been living harmoniously until 1st December, 2021 when the accused became rude and stopped going to church. On **cross examination, Pw.6** confirmed that he was I/O in the matter and that whereas the offence in question is alleged to have taken place on 19.12.2021 he visited the crime scene on

21.12.2021, he stated that this was because soon after the offence, the deceased was taken to hospital and that no report had been made. He confirmed that his investigations and interrogation of witnesses who included family members who were present in the vicinity when the incident occurred led him to conclude that the accused had stabbed the deceased. He confirmed that the murder weapon was not recovered. He confirmed that during his investigations no evidence was presented to him that the accused was not well and that he had sought medical attention.

10. Section 211 of the Criminal Procedure Code was complied with, the accused person opted to give a sworn statement and called one witness in support of his case.

11. **DW.1** the accused testified that on the material day, he was preparing to leave for church and his wife (the deceased) went to heat water for him to take a bath, after taking his bath, his wife went to take a bath and came back from the bathroom having tied a *leso* round her waist and as she passed by him, the *leso* fell down and he noticed that

she was bleeding profusely. He testified that he got shocked and lost consciousness and found himself at Fort Tenan Hospital on the next day. He maintained that he did not know what had happened to his wife and that they had lived harmoniously with his wife of over 26 years and that they were blessed with 7 children. He stated that 3 months preceding the demise of the deceased, he was sick. He stated that their bathroom was made of iron sheets and that farm implements were always kept in the store. On **cross examination, DW.1** confirmed that he did not have medical records to show that he was sick 3 months before the awful incident.

12. **DW.2** testified on the material day he received a call urging him to rush to their homestead as things were not good. He testified that when he arrived at the homestead, he was informed that the deceased who was bleeding profusely was taken to Fort Tenan Hospital and subsequently transferred to Kericho County Referral Hospital. He testified that at the homestead, he stumbled upon the accused who

was unconscious, he took him to Fort Tenan Hospital and he remained at the said hospital taking care of the accused who was admitted for 3 days. He testified that when they were discharged they went home, where they received the sad news that the deceased had passed away. He stated that he was not privy to any dispute between the couple. On ***cross examination, DW.2*** confirmed that he did not have any document to prove that the accused was admitted in hospital for 3 days. He further confirmed that he was informed that the deceased had sustained fatal injuries while in the bathroom.

13. At the close of the defence case, Mr. Kiletyen, the Learned Counsel representing the accused stated that he would file written submissions on behalf of the accused person, however, at the time of writing this judgment he had not filed any submissions, therefore this court considered the material on record to arrive at a fair and just determination.

14. The sole issue for consideration is whether the prosecution proved its case against the accused beyond reasonable doubt.

15. The offence of murder is provided for in **section 203** of the Penal Code that provides as follows; ***“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”*** In ***Republic v Andrew Omwenga [2009] eKLR*** the court held: ***“It is clear from this definition that for an accused person to be convicted of murder, it must be proved that he caused the death of the deceased with malice aforethought by an unlawful act or omission - there are therefore three ingredients of murder which the prosecution must prove beyond reasonable doubt in order to secure a conviction. They are: (a) The death of the deceased and the cause of the death, (b) That the accused committed the unlawful act which caused the death of the***

***deceased and (c) That the accused had the malice aforethought.”***

16. The accused person in this case was charged with the offence of murder contrary to section 203 of the penal code which defines murder as the unlawful killing of a person or persons with malice aforethought.

***(a) Death and Cause of Death***

17. In this case the death of the deceased person is not disputed, several prosecution witnesses testified that on the material day the deceased was taken to Fort Tenan for medical treatment after she sustained a fatal wound in her stomach, she later passed away at the Kericho County Referral Hospital where she was transferred for further medical treatment. **PW.5** a medical doctor based at Kericho County Referral Hospital testified that that he conducted an autopsy on the body of the deceased and formed the opinion that the cause of death as heavy blood loss due to a stab wound and produced the post mortem report as **PExh.1** which report was adopted by this court.

**(b) Whether the accused committed the unlawful act which caused the death of the deceased**

18. This court is cognisant of the fact that none of the prosecution witnesses witnessed the assault on the deceased, however, the witness account placed the accused at the crime scene. There is therefore no direct evidence linking the accused to the unlawful act that caused the death of the deceased, however, having considered the facts of this case, it is the finding of this court that the prosecution's case is founded on circumstantial evidence that points towards the culpability of the accused. In the case of **Ahamad Abolfathi Mohammed and Another v Republic [2018] eKLR**, the Court of Appeal had this to say on circumstantial evidence: “ **However, it is a truism that the guilt of an Accused person can be proved by either direct or circumstantial evidence. Circumstantial evidence is evidence which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence can**

***form a strong basis for proving the guilt of an Accused person just as direct evidence.”***

19. According to the accused, the deceased had sustained the fatal injury mysteriously whilst taking a bath, however, it is the finding of this court that the same amounted to a mere denial. Accordingly, I am satisfied that the prosecution proved beyond reasonable doubt that it was the accused person who unlawfully caused the deceased's death.

© ***Whether the Accused Person had Malice Aforethought.***

20. For the charge of murder to succeed, it must be proved that they acted with malice aforethought. Section 206 of the Penal Code provides circumstances from which malice aforethought may be inferred. They are: "***(a) An intention to cause death of or to do 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 person, whether that person is***

***the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;*** © ***An intention to commit a felony;(d)...***" Having considered the brief facts of this case, whereas there seems to be no motive for the awful incident. I find that the accused person herein had malice aforethought, which can be inferred from his actions on that fateful day and the indifference as to whether death or grievous bodily harm would ensue. In the case of ***Republic v Tubere S/O Ochen [1945] 12 EACA 63*** the East African Court of Appeal set out the circumstances in law under which malice aforethought can be inferred: ***"a. The nature of the weapon used (whether lethal or not), b. The part of the body targeted (whether vulnerable or not), c. The manner in which the weapon is used (whether repeatedly or not) and d. The conduct of the accused before, during and after the attack."***

21. Accordingly, I find that the defence put forward by the accused person namely: **David Kamore Mugo** does not displace the prosecution's case. The prosecution has proved its case against the accused beyond reasonable doubt and in the premises, I find the accused person guilty for the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The accused person is hereby convicted for Murder.

**Dated, Signed and Delivered at Kericho this 2<sup>nd</sup> day  
of October, 2025.**

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**J.K. SERGON  
JUDGE**

In the presence of:

C/Assistant - Ruttoh

Prosecutor - Maundu

Accused - Present in Person

Morata for the Accused