



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KABARNET**

**CRIMINAL CASE NO. E042 OF 2023**

**REPUBLIC.....PROSECUTION**

**VERSUS**

**JOHANA**

**KIPROTICH**

**LOUNONI.....ACCUSED**

**JUDGMENT**

1. The accused, **JOHANA KIPROTICH LOUNONI**, was charged with the offence of **murder contrary to Section 203 as read with Section 204 of the Penal Code.**
2. The particulars of the charge were that on the 31<sup>st</sup> day of April 2022 at Kapsabet Village Kamar in Mogotio Subcounty within Baringo county the accused murdered Mary Tungo.
3. The accused denied the charge, and the matter proceeded to full trial with the prosecution availing 8 witnesses and on accused being placed on his defence, he gave sworn statement and did not avail a witness.

### **PROSECUTION'S CASE**

4. PW1 Eric Lounonia testified that on 1/4/2022 at 4 a.m., he was at home when accused's son woke him up and told him that the accused who is his son had killed his mother who was his wife. He said he told them to hide up to morning as they feared accused could harm them. He said he went to hid in the forest until morning then he went to the chief to report the incident. He went to accused's house to see the body with the chief. He said the body was on the floor with a panga near it. He identified the panga in court. He said things in the house were broken and the deceased's body had a cut on the head. He identified 5 photos taken of the body. He said police called police who arrived and took the body to Eldama Ravine mortuary. On cross examination, he said the incident occurred at around 1 a.m. and that his house is about 200 meters away from his son's house.
5. Pw2 Kabon Kipkorir testified that was at accused's house drinking changaa when he saw accused hit the deceased with a sufuria and thereafter cut with a panga after getting annoyed when the deceased removed her shirt exposing her breasts. He identified the sufuria in court. On cross examination, he said the deceased was very drunk but he was not so drunk and that there was D-light in the house.

6. Pw3 Joylin Chepchirchir Lounonia testified that on 31/3/2022, she received a call from her father who informed her that her mother had been killed. She went home and found her mother the deceased dead with a cut on the neck. She saw a sufuria and a panga which she identified in court.
7. Pw4 Richard Kurgat who is a brother to the deceased received call that her sister had been killed. He attended postmortem and confirmed that the deceased had deep cuts on the neck.
8. Pw5 Dr. Kibet Kimwei conducted postmortem on the body of the deceased Mary Tungo Lounoni and concluded that the deceased died as a result of deep cuts on the neck and compressed head as a result of being hit with a sufuria.
9. Pw6 Salvine Cheruto Katukoi a government analyst testified that she received exhibit memo escorted by no.52149Cpl Japheth of DCI Mogotio police station. He said he received a panga with black handle in green carrier bag marked "A" and also blood sample of Mary Tungo in vacutainer tube marked "b". she found that the panga was heavily stained with blood of human origin. She did analysis on 1/9/2022 and the outcome was that the DNA profile generated from blood

stains on the panga item “a” matched the DNA profile generated from the blood sample of Mary Tungo Lounoni. She prepared report and produced in court as prosecution Exhibit 2.

10. Pw7 no.112109 PCW Yvone Omondi who is a crime scene investigator appointed by DPP under Gazette number 1145 of 3/2/2023 testified that she was requested by NCCI Mogotio to produce an enlarged photographic scene using phone number imei no.869378049390362 and showed court 13 photographs she produced and the certificate she issued which was marked exhibit p5. On cross examination she said she did not visit the scene.
11. Pw8 no.52149 Cpl Japhethe Mulimo who is now retired but served at Mogotio from 2019 to 2022 testified that he received report from SP Luka Tumbo who informed that he had received murder report at Kamar area. Together with OCS CIP Adams Kirwa and two other police officers, they went to home of Lounoni at Kamar location where they found Mary Tungo Lounoni aged 60 years with a cut on the neck and on checking the house, he saw a blood-stained panga and a sufuria used to hit the deceased on the head. He collected the exhibits and asked the OCS to take the body to Eldama Ravine Mortuary as he remained at the scene to record statements.

12. Pw8 said on 2/4/2022 at around 9 p.m., the accused was taken to police station by area chief and members of public. He took to Kabarnet court under Miscellaneous file number E014 of 2022 to get extension of time to hold him up to 6/4/2022. He confirmed postmortem was done after which accused was charged with the present offence. He produced the panga and sufuria used to inflict injury on accused in court as exhibits.

### **DEFENCE**

13. Upon being placed on his defence, the accused opted to give sworn testimony but did not call witnesses. He testified that he is 39 years old married with 4 children. He stated that on 1/4/2022, he was at his home from morning upto 2 p.m when he left to Chebiwan shopping centre where he shopped after which he passed by a place to drink alcohol where he drunk alcohol and went home at 5 p.m. She said on arriving home, he found his mother sleeping in the kitchen. He went to his father's house and later returned and found his father who was drunk outside. He said he continued drinking with people who were in the house while his brother Wilson took his father to his house. He said they drunk up to 10 p.m. when his mother Mary Tungo arrived while naked and called him and told him their father was oppressing her but when she went to them they blame her. He said the deceased said all her children will be finished and accused should not count

them. He said the lady who was present took her outside. He said it was around 11 to 12 noon and that he was drunk and angry and he found himself cold in the forest near his store around 4 to 5 a.m. He said he went to his house and found a person had fallen and he went to his brother to tell what had happened but he did not find his brother. He went to police station to report. He said he found a police officer but feared to tell him what had happened and went back. On reaching his home he found people who started saying "this is the person you were looking for. He was arrested. He denied being involved in the death of his mother.

14. On cross examination, he confirmed that the deceased was his mother and that she spoke to him and left the house but he did not see her return. He said he learnt that he learnt that the deceased had died at 4.00 a.m. on 1/4/2022. He confirmed that the deceased died in his house and confirmed that he had had conflicts with his father.

15. In reexamination, the accused said the deceased had disagreed with his father and she had gone to sleep in his house and that his father had gone to check if the deceased was in accused's house and told accused to tell her he had forgiven her and tell her to go back to her house. He confirmed that his father left his house after that.

## **ANALYSIS AND DETERMINATION**

16. The accused, **Johana Kiprotich Lounoni**, faces a charge of murder contrary to section 203 as read with section 204 of the Penal Code. The prosecution bears the burden to prove, beyond reasonable doubt, the following ingredients as set out in *Anthony Ndegwa Ngari v Republic* [2014] eKLR:-

- a) The fact and cause of death of the deceased;
- b) That the death was unlawfully caused by the accused;  
and
- c) That in causing the death, the accused had malice aforethought.
- d) Weight of accused's defence

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

17. There is no dispute that the deceased, **Mary Tungo Lounoni**, is dead. PW1, PW3 and PW4 — her close relatives — testified to identifying her body. PW5, Dr. Kibet Kimwei, who performed the postmortem, found deep cuts on the neck and head compression injuries consistent with blunt trauma from a metallic sufuria. He concluded that the cause of death was severe hemorrhage secondary to deep cut wounds and head injury.

18. This medical finding was unchallenged. I therefore find that the prosecution has proved the fact and cause of death

beyond reasonable doubt. (*Republic v Cheya & Another* [1973] EA 500).

**(b) Whether the Death was Unlawfully Caused by the Accused**

19. It is settled law that every homicide is presumed unlawful unless excusable or justified (*Guzambizi Wesonga v Republic* [1948] 15 EACA 63). There is no evidence suggesting that the deceased's death was either accidental or legally justified.
20. The key question is whether the accused is the person who inflicted the fatal injuries.
21. PW2 Kabon Kipkorir gave direct eyewitness evidence. He testified that while they were drinking chang'aa at the accused's house, the deceased removed her shirt, which angered the accused. The accused then hit her on the head with a sufuria and cut her with a panga. PW2 stated there was D-light illumination in the house, and although he had taken alcohol, he was not too drunk to recognize the accused — a person well known to him.

22. PW1, the accused's father, received information that his son had killed his mother. When he went to the scene with the chief, he found the deceased's body lying on the floor, a panga nearby, and household items scattered, suggesting a violent confrontation.
23. PW6, the Government Analyst, confirmed that the panga recovered from the accused's house was stained with human blood, and DNA analysis showed that the blood matched that of the deceased.
24. PW8, the investigating officer, corroborated that the blood-stained panga and sufuria were recovered from the accused's house, which was also the scene of crime.
25. The accused, in his sworn defence, admitted being with the deceased in the house that night, though he claimed intoxication and denied attacking her. His account of waking up in a forest and later finding his mother dead is implausible in light of the direct and scientific evidence against him.
26. The Court of Appeal in *Sawe v Republic* [2003] KLR 364 held that "the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt."

27. In this case, the direct eyewitness account, corroborated by forensic linkage of the murder weapon to the deceased's blood, leaves no reasonable doubt that it was the accused who unlawfully caused his mother's death.

**(c) Whether Malice Aforethought was Established**

28. Section 206 of the Penal Code defines **malice aforethought** as including intention to cause death or grievous harm, or knowledge that the act would probably cause such result.

29. The evidence shows that the accused inflicted deep neck cuts and head injuries using a panga and sufuria — lethal weapons targeted at vital parts of the body. Such brutal injuries cannot be accidental or provoked to the extent of negating intent.

30. In *Republic v Tubere s/o Ochen* [1945] 12 EACA 63, the Court stated that malice aforethought may be inferred from the nature of the weapon, the part of the body targeted, and the severity of the injuries. Similarly, in *Nzuki v Republic* [1993] KLR 171, intent may be inferred from the circumstances and the conduct of the accused.

31. Although both the deceased and the accused had been drinking, intoxication does not of itself negate malice unless it rendered the accused incapable of forming intent (*Republic*

*v Mutua s/o Ngunya* [1953] 20 EACA 255; *Nyambane v Republic* [1986] KLR 248). There is no such evidence here.

32. The deliberate and repeated attack on the deceased's head and neck demonstrates an intention to cause death or grievous harm. I therefore find that malice aforethought was established beyond reasonable doubt.

**(d) weight of accused's defence**

33. In his defence, the accused admitted that the deceased was in his house but offered no credible explanation as to how she sustained fatal injuries there. Section 111 of the Evidence Act places upon him the burden of explaining facts especially within his knowledge.

34. His explanation was inconsistent and did not shake the prosecution case. As held in *Odhiambo v Republic* [2008] eKLR, the defence must be weighed against the entire evidence, and where it fails to raise doubt, conviction must follow.

35. From the forgoing. I am satisfied that the prosecution has proved the charge against the accused beyond reasonable doubt that: -

- a) The deceased, **Mary Tungo Lounoni**, died as a result of severe neck and head injuries;
- b) The said injuries were unlawfully inflicted by the accused; and
- c) The accused did so with malice aforethought.

36. **FINAL ORDERS:** -

- a) I hereby find **Johana Kiprotich Lounoni guilty of murder** contrary to section 203 as read with section 204 of the Penal Code and **convict** him accordingly.
- b) Right of appeal 14 days.

**Judgment** delivered, dated and signed Virtually at Kabarnet this **16<sup>th</sup> Day of October, 2025.**



.....  
**RACHEL NGETICH**  
**JUDGE**

**In the presence of:**

- Ms. Omari for state
- Ms. Barasa for state
- CA, Momanyi.
- Accused