



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA HIGH COURT

CASE NUMBER: HCCRC/E013/2022

THE REPUBLIC VS MURAD AWADH MBARAK

JUDGMENT

BACKGROUND

1. The late Nuru Ibrahim was the wife of the accused person. Even though the prosecution did not produce any documentary proof of the marriage, the accused admitted that they were married and that they had five surviving children, one having passed away earlier.
2. The children were, unfortunately, present in the house on the ill-fated night of 19th June 2022, and witnessed the horrific events that led to their mother's death. One of them, PW 3, then aged 11 years, narrated her harrowing experience in court.
3. The accused stated that the marriage had been peaceful and that he had no problem with his wife until that fateful night. However, the rosy picture he painted was deconstructed by at least five prosecution witnesses, including Nasra Ibrahim (PW 2), a sister to the deceased; Said Omar (PW 4), an uncle; and Salama Mohammed (PW 6), a cousin.
4. The three testified that the couple had frequent disputes that had necessitated family interventions. The disputes mainly revolved around money. The deceased had sold her jewellery to contribute towards the development of their matrimonial home, though the property was registered in the accused's name as per the Sale Agreement – PEX 6. There was also evidence that the accused had lent money to one Ali, a brother to the deceased, and their father had partially repaid the debt before his death. The accused, however, continued to demand the balance from the deceased despite being advised to await completion of succession proceedings of his father in law's estate.
5. There were further allegations that the accused was infuriated by the deceased's decision to join Instagram which he feared would expose her or lead her to interact with male followers.
6. Owing to the persistent disputes, the deceased had expressed her desire to separate and divorce the accused. PW 2, PW 4, and PW 6 all confirmed this and added that she had demanded a refund of her contribution to the construction of the house so that she could start a new life.



7. PW 2 testified that on 17th June 2022, she spoke with the deceased regarding these problems. Earlier, on 1st May 2022, the deceased had taken her handbag containing important documents ; including allotment letters and birth certificates of their six children to her sister for safekeeping, together with some clothes.
8. The same witnesses testified that the accused had threatened to either kill or maim the deceased and to post her nude photographs on social media should she attempt to leave him.
9. PW 4 testified that on 16th June 2022, the accused called him using line number 0721364269, complaining that his wife had joined Instagram. On 18th June 2022, at about 10:00 a.m., another quarrel arose, and he intervened, advising them to reconcile. Later, around 3:00 p.m., the accused called again, saying that his wife wanted to go to the police to obtain a P3 form. The witness advised him to allow her to do so, promising to visit them later. However, that evening, he received a call from one Hassan informing him that Nuru had died.
10. PW 5 testified that the accused called her on 17th June 2022 at about 5:00 a.m., and during the call, the deceased expressed her desire to separate. The accused then threatened that if she dared to leave him, he would post her photographs on social media and ensure that no other man would want her. there was evidence that indeed he has possession of some nude photographs which he was threatening her with.
11. It was against this background that the accused was charged with the offence of murder.

The Offence

12. The accused was charged with murder contrary to Section 203 as read with Section 204 of the Penal Code, the particulars being that on the 19th day of June 2022, at Majengo Kanamai Area in Kilifi South Sub-County within Kilifi County, he murdered Nuru Ibrahim. He pleaded not guilty, and the State called a total of ten (10) witnesses.

The Law

13. Article 26 of the Constitution of Kenya, 2010 guarantees the right to life and provides that no person shall be deprived of life intentionally except as authorized by law. The offence of murder under Sections 203 and 204 of the Penal Code requires proof of the following elements as stated in Republic v Andrew Omwenga [2009] eKLR:

- Proof of death and the cause thereof;
- That the accused's act or omission caused the death (actus reus); and
- That the act was accompanied by malice aforethought (mens rea).

Proof of Death

14. The fact of the death was not disputed. The accused himself admitted that his wife had died. The body was removed to the mortuary by police officers, and a postmortem examination confirmed the cause of death as per the Postmortem Report – PEX 8.

Whether the Accused Caused the Death

15. PW 3, the deceased's daughter, testified that she was awakened by her mother's cries, shouting "Unaniua! Unaniua!" ("You are killing me!"). She rushed to her parents' bedroom, where she saw her father hitting her mother with a broken piece of wood from a baby's cot.

16. She described that her mother was naked while her father wore a blue T-shirt and trousers. Her father continued to beat her mother, who screamed in pain. Neighbours, including Rehema (PW 1) and Nasra (PW 2), responded to the distress calls.

17. PW 1, Rehema Said Salim, testified that at around midnight on 19th June 2022, she was woken by screams of "Nauliwa! Nauliwa!" ("I am being killed!"). She went to the accused's house, called



out several times, and the accused opened the curtain but refused to open the door, stating that his wife had betrayed him. She saw the deceased bleeding from the eye and screaming while stark naked.

18. PW 1 and others pleaded with the accused to open the door, but he declined. When the neighbours tried to unlock the door using keys given to them by the daughter, the accused stabbed their hands through the opening with a knife, forcing them to retreat. The accused eventually surrendered after the police were called.

19. The knife and the broken pieces of wood were recovered and produced as PEX 1 and 2. Forensic examination revealed that both the knife and the accused's clothes PEXT 4 AND 5 were stained with blood matching the DNA profile of the deceased. The report was PEXBT 7.

The Defence

20. In his defence, the accused claimed that an intruder had attacked them and that the fatal stab wound was inflicted by that intruder. However, several eyewitnesses including PW 1, a neighbour not related to him, PW 3, his own daughter then 11 years old, and PW 4 and PW 5, in-laws consistently testified that no one else was in the house except the deceased, the accused, and the young children.

21. The accused further alleged that he had just returned from a long journey, but this was contradicted by DW 2 his employer, who testified that the accused had not been in his employment for some time and had just requested for a job that day.

22. The court is satisfied that the evidence of the eyewitnesses, coupled with the forensic findings linking the accused to the murder weapon and the deceased's blood, establishes beyond reasonable doubt that the accused inflicted the fatal injuries on the late Nuru Ibrahim.

Malice Aforethought

23. Under Section 206 of the Penal Code, malice aforethought is deemed established when there is evidence of intention to cause death or grievous harm, knowledge that the act will probably cause death, or intent to commit a felony, among other circumstances.

In **Republic v Tubere s/o Ochen (1945) 12 EACA 63**, the court held that malice aforethought can be inferred from the nature of the weapon used, the manner of use, and the part of the body targeted.

24. In this case, the accused had, prior to the act, threatened to harm the deceased and to "do something to her that no other man would have her." On the night of the murder, he locked the deceased in the house, broke a baby's cot to obtain a weapon, assaulted her severely, and eventually stabbed her. He refused to open the door to allow assistance even as she lay dying.

25. There was also evidence that when the deceased asked for water, neighbours advised the accused not to give it as she was dying. He nevertheless gave it and stood by as she said her final prayers. His conduct in preventing help and attacking neighbours who attempted to intervene clearly demonstrates deliberate and calculated cruelty.

26. The accused's actions were deliberate, brutal, and motivated by jealousy. The court finds that all the elements of murder have been proved beyond reasonable doubt. Accordingly, the accused, Murad Awadh Mbaraka, is hereby convicted of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code under section 322(1) of the Criminal Procedure Code.

IT IS SO ORDERED.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS
AT MOMBASA THIS 14TH DAY OF NOVEMBER 2025.**



**HON. LADY JUSTICE W. K. MICHENI
JUDGE**

In the presence of:

The accused person and his advocate MR Paul Magolo

MS Kimili watching brief for the family

Mr Ngiri for the state

Bebora court assistant

SIGNED BY/FOR:
HON. LADY JUSTICE WENDY MICHENI



THE JUDICIARY OF KENYA.
MOMBASA HIGH COURT
HIGH COURT CRIMINAL
DATE: 2025-11-16 00:18:42

