



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYANDARUA**  
**CRIMINAL CASE NO. E014 OF 2024**

**REPUBLIC..... PROSECUTOR**

**VERSUS**

**PATRICK MAINA MUCHEMI.....ACCUSED**

**JUDGMENT**

1. Patrick Maina Muchemi charged with an offence of murder contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars of the offence are that on the 8<sup>th</sup> day of August 2024, in Chamuka village, Ngorika location, Mirangine Sub-County within Nyandarua County, he murdered Henry Mworira Wanjiru.
3. An intruder entered the deceased's house by digging a hole behind it. When a daughter heard a commotion and saw someone under the bed, she raised the alarm. The intruder spoke, and some family members recognized the voice as that of the accused. The intruder then fatally injured the deceased.
4. Patrick Maina Muchemi claimed that he went to the deceased's house for an illicit sexual encounter. According to him, the deceased was not there but later returned with others. During an attempt to strike him, one of the people with the deceased hit the deceased instead.
5. The issues for determination are:
  - a) Was the voice of the intruder positively identified as that of the accused?
  - b) How did the incident occur?
  - c) Whether the offence of murder was proven against the accused.
6. Whenever voice recognition is used to identify an accused, caution is essential to avoid mistakes. The Court of Appeal in Simeon Mbelle vs Republic [1982] IKAR 578 emphasized this point.

***In relation to the identification by voice, one would obviously be necessary to ensure:***

***(a) That it was the accused person's voice;***

**(b) That the witness was familiar with it and they recognized it and**

**(c) That the conditions obtaining at the time it was made were such that there was no mistake in testifying to that which was said and who said it.**

7. In this case, I will attempt to establish whether the voice that was heard saying “*Wangari ni mukuuma guku*”, meaning, Wangari, you will all leave this place, was that of the accused.
8. Naomi Wanjiru Mworira (PW1) testified that she recognized the voice as that of the accused, their neighbour, whom she had known since she was in Grade 6. At the time of her testimony, she was in Grade 8. Her mother (PW3) also said she recognized the voice as the accused's. She did so in what she referred to as the Nyeri dialect and through many interactions with him; she used to give him casual work.
9. Esther Njambi Mworira (PW2) confirmed the voice identification of these two witnesses, stating she recognized him physically when the bedroom lights were turned on. She also detailed his clothing.
10. Jonah Kanina Wanjiru (PW4) awoke around 2 a.m. due to screams from the deceased's house. Approaching a path to the home, he encountered the accused, whom he recognized by the moonlight coming from the deceased's residence. He asked what was happening, but the accused did not respond. When PW4 threw a metal bar at him, the accused bent over, causing his phone to fall; PW4 then picked it up. This phone was later presented as evidence.
11. If there was any lingering doubt, which I believe there was not, the accused's own testimony confirmed he was at the deceased's house, where he went for an illegal sexual encounter with (PW3). I conclude that the accused was the intruder into the deceased's home.
12. The prosecution asserts that the accused entered by digging a hole behind the house. PW1 testified that she heard sounds from the wall while sleeping, initially thinking it was a puppy. She then sensed movement under her bed and, when she shone her torch, saw someone in a red shirt. She was hit on the head and shoulder, which caused her to lose consciousness temporarily. Later, she identified a voice.
13. Chief Inspector George Okumu (PW8) and other officers visited the scene. He testified that they found a hole that led into the house through PW1's bedroom, large enough for a person to pass.
14. Patrick Maina Muchemi, the accused, claims he visited the deceased's house and had sex with his wife. He was aware the deceased was away but was awakened by his wife. He then saw the deceased had returned, accompanied by others. As he tried to flee, the deceased held him, and someone with the deceased tried to strike him with an iron bar, but accidentally hit the deceased.

15. The accused's account does not hold up when compared to the evidence on record. I conclude that the incident occurred as outlined by the prosecution.

16. To secure a conviction based on the evidence on record, the prosecution must establish the presence of malice aforethought. In Black's Law Dictionary, 10th Edition, malice aforethought is defined as:

*The requisite mental state for common-law murder, encompassing any one of the following (1) the intent to kill (2) the intent to inflict grievous bodily harm (3) extremely reckless difference to the value of human life (the so-called "abandoned and malignant heart"), or (4) the intent to commit a dangerous felony (which leads to culpability under the felony-murder rule).*

17. Section 206 of the Penal Code gives instances when malice aforethought may be proved. It provides:

*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 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;*

*(c) an intent to commit a felony;*

*(d) An intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.*

18. The way the accused entered the deceased's house clearly shows his intentions. He was armed and prepared to confront anyone who tried to stop him from carrying out his mission. This was evident when he assaulted PW1 before fatally attacking her father.

19. Therefore, I conclude that the prosecution has proved the charge beyond a reasonable doubt. I find him guilty and convict him of murder.

**Delivered and signed at Nyandarua, this 3<sup>rd</sup> day of December 2025**

**KIARIE WAWERU KIARIE**

**JUDGE**