

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
CRIMINAL CASE NO. 60 OF 2023

REPUBLIC.....

PROSECUTION

VERSUS

PRISCILLA WAIRIMU NJERU.....1ST

ACCUSED

GODFREY MURITHI GACHORA.....2ND

ACCUSED

ROSEMARY NKONGE.....3RD

ACCUSED

MARY MUTHONI KAMAU.....4TH

ACCUSED

JUDGEMENT.

1. The four accused persons are jointly charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code, to which they pleaded not guilty. The particulars of the offence are that on the night of 28th and 29th November 2015 at Ward 8C within Kenyatta National Hospital within Nairobi County, jointly with others, not before the court, murdered Cosmas Mutunga Kenyatta.
2. The prosecution called eighteen (18) witnesses supporting the case against the accused persons.
3. The prosecution led evidence establishing the circumstances surrounding the deceased's death, who was a patient at Kenyatta National Hospital. PW2, Celestine Mwendu Kenyatta, widow of the deceased, testified that she visited the deceased daily. On 28th November 2015, she attended the hospital midday with her

nephew, Mutinda Kimanzi, returning later at 16:00 hours and remaining until 19:00 hours. During this visit, the deceased received two male colleagues and later other relatives, all of whom he recognised and communicated with independently. He could sit, eat, and converse without assistance. PW2 left the deceased in the company of a co-patient, a mute, with cancer, while nurses attended to duties. On 29th November 2015, en route to KNH, she received an urgent call and, upon arrival, discovered the deceased had been murdered. She observed multiple stab wounds, a missing eye, and extensive facial injuries.

4. PW3, Ruth Mawiya, PW4, Peter Muema Muthengi, and PW5, Japheth Kimanzi, corroborated that the deceased had been in good health the previous day. Upon viewing the body on 29th November, they observed severe injuries, including missing teeth, facial lacerations, and a fractured leg.
5. PW1, Kigen Vincent Kirui, security officer on night duty at the casualty entrance from 20:00 hours on 28th November, testified that at approximately 06:00 hours on 29th November, PW9, Elias Chacha Nyamunhanga, senior security warden, summoned him to Ward 8C. They found the ward door closed but unlocked. A nurse led them to the male white team room, where the deceased lay uncovered with injuries to the eye, neck, and legs.
6. Blood was splattered on the walls, floor, and curtains. A child co-patient was present, asleep, and an adjacent bed remained unoccupied. PW1 briefly observed and returned to duty, noting no other persons present.
7. PW9 corroborated receiving a call at 05:40 hours, visiting the scene with PW1, and meeting three nurses, including Priscila Njeru (1st accused), who discovered the body at 05:30 hours

during routine rounds. A blood-stained metal angle bar was found on an unoccupied bed, missing from a nearby storage area containing six similar bars. PW9 secured the exhibit and notified the authorities, handing over the scene to the police after approximately twenty minutes. The layout of the ward placed the nurses' station 10 - 15 metres from the room, with an open plan facilitating observation.

8. PW10, Sarah Chepkwony, security officer at the ground-floor entrance, confirmed no suspicious persons or incidents during her night duty.
9. PW6, Everlyne Mukambi Waigara, PW7, Mwajuma Maulid Juma, and PW8, Mary Wairimu Kinga, nurses assigned to adjacent wards, testified on night routines, noting that ward doors were progressively locked from midnight, though discrepancies existed as to timing and personnel. They were informed of the incident during handover between 07:00 and 08:00 hours by Paul Kamau.
10. PW11, Wilson Chepkurkey Chepkwesi, acting Head of Security, attended prior to 06:00 hours and found the deceased at the point of death with deep facial lacerations and injury to one eye. The blood-stained metal bar lay on an adjacent bed. A co-patient, Clement Kang'onde, exhibited Down syndrome, was incoherent but uninjured, and was wearing clean garments. PW11 secured the scene until the arrival of Corporal Amos Orodí at 07:20 hours.
11. PW15, Corporal Lipton Mwalimu Bengi, Crime Scene Investigator, arrived at 08:30 hours, photographing the scene. He documented the deceased, partially covered, with multiple facial and hand injuries, and the metal bar on an adjacent bed. Blood spatter was evident on the walls and floor; similar metal bars were stored in the ward. Clement exhibited no visible blood.

12. PW14, Corporal Amos Orodi, first officer at the scene, noted a blood-stained kikoi on the floor, two teeth beneath the bed, potential blood on Clement's clothing, defensive injuries on the deceased, and possible points of entry through windows and doors.
13. PW16, SSP Martin Korongo, Deputy DCIO Kilimani, arrived subsequently. By then, the scene had been cleared, and the body moved to the mortuary. He assumed custody of three nurses on duty, the metal bar, beddings, and phones. Subsequent interviews with hospital personnel and co-patients were largely uninformative. Clement's profile confirmed Down syndrome and a non-violent disposition. Similar metal bars were recovered and exhibits forwarded for laboratory analysis, but no direct linkage to any accused was established at that stage.
14. PW17, Lawrence Kinyua Muthui, government chemist, analysed exhibits on 9th December 2015. Human blood on the beddings, Clement's trousers, and the metal bar matched the deceased's DNA. A blood-stained kikoi yielded no DNA profile.
15. PW18, Senior Sergeant Peter Kosgeyi, investigating officer, revisited the scene on 30th November. Observations included only two patients present; no strangers were reported; access from outside appeared improbable. The accused nurses were on duty per hospital records; Priscila Njeru administered medication at 04:00 hours and later raised the alarm. Phone analyses were non-incriminating; no motive was established. In light of the evidence, the officer recommended an inquest and subsequently, the ODPP charged the accused persons.
16. After the close of the prosecution's case, the accused persons were found to have a case to answer and were placed on their

respective defences. The 1st accused, Priscilla Wairimu, a nurse with 27 years' service at KNH, testified that she was on night duty in Ward 8C on 28th November 2015. She had taken over the shift at 17:30 hours, receiving a report from the day staff. The ward contained 32 patients across male and female sections. She described her routine duties: administering treatment, feeding, turning immobile patients, and attending to blood transfusions.

17. At 04:00 hours, she checked on the deceased, a stage 4 cancer patient with paralysis on the right side, who required turning and assistance with fluids. She observed blood on his face and initially attributed it to a nosebleed. Upon wiping his face with a shirt, she discovered two facial cuts. She immediately called for assistance from colleagues (DW2 and DW3) and later notified KNH security. She described moving a blood-stained metal bar on the floor to a safer position and emphasised that she wore gloves throughout treatment. She reported the incident via the hospital's internal telephone.

18. DW1 further testified on ward security, including three main doors: the lift access, the emergency exit, and access to Ward 8B, secured with chains and cloths. Windows in the ward were sliding and not lockable. She emphasised that patient mobility necessitated constant opening and locking of doors and that there were no alarms in the general ward.

19. Cross-examination confirmed she did not personally control all keys, did not observe any security breach, and only saw the deceased for treatment purposes. She stressed the deceased's immobility and her lack of personal motive or prior interaction.

20. DW2, Godfrey Murithi Gadora, a retired nurse, testified that he was on the night shift alongside DW1 and DW3. He confirmed that

doors were secured using chains and padlocks and that he handled the main locking duties. He reported that the deceased had been in Ward 8C since 19th November 2015, was bedridden, non-verbal, and required continuous care.

21. He corroborated the events described by the scream at 05:00 hours, blood on the wall and ceiling, and the discovery of the deceased's injuries. He noted that they called security and the covering nurse, Kamau, and awaited police arrival. Gadora denied knowledge of the deceased or any motive, and confirmed access to windows and other entry points made the ward inherently porous.
22. On Cross-examination, he emphasised that he did not personally observe any security breach, did not manipulate the store or metal bars, and had no intent to harm the deceased.
23. DW3, Rosemary Gataka Nkongo, a retired locum nurse at KNH, testified that she joined the night shift on 28th November 2015 alongside DW1 and DW2. She confirmed rounds, medication administration, and securing doors. She described responding to DW1's scream at 04:00 hours, finding blood on the walls and ceiling, assisting in checking the deceased, and reporting the incident to security and covering staff. She emphasised that all staff were in uniform and gloves, and none had blood on them.
24. On cross-examination confirmed she had no prior acquaintance with the deceased and was not present in other parts of the ward during the incident.
25. DW4, Mary Muthoni Kamau a cleaner at KNH, testified she was on duty in Ward 8C from 19:00 to 01:00 hours. She stayed near the nurses' desk awaiting emergencies and learned of the incident at approximately 06:00 hours. She stated she did not

enter the wards unless instructed and denied any involvement in the deceased's death. On cross - examination corroborated that her duties were limited to cleaning, primarily toilets and corridors.

26. The parties filed written submissions in support of their respective positions. The same have been considered, and there is no need to rehash them.

27. I have considered the totality of both the prosecution and defence evidence in the light of the applicable law, including the submissions. I find the following to be the issue for determination: whether or not the accused persons caused the death of the deceased.

28. Having considered the entirety of the evidence presented in this matter, the Court is called upon to determine whether the accused persons are guilty of the murder of Cosmas Mutunga Kenyatta, a patient admitted to Ward 8C at Kenyatta National Hospital, on 28th November 2015.

29. The charge, framed under the Penal Code, requires proof beyond reasonable doubt of the essential elements of murder, namely that the accused caused the death of the deceased with malice aforethought. Malice aforethought entails either an intention to kill or cause grievous bodily harm, or a reckless disregard for human life. The law is settled that where there is a reasonable possibility of innocence, the benefit must favour the accused.

30. The prosecution relied on circumstantial evidence and the testimony of witnesses to assert that the accused nurses, present in the ward on the night in question, caused the violent death of the deceased. The evidence establishes that the deceased sustained multiple injuries, including stab wounds to the face and head, a missing eye, fractured teeth, and other blunt force

trauma, and that a blood-stained metal bar was present in the ward. Several witnesses, including relatives and co-patients, described the deceased as being in good health prior to the incident, while hospital staff described his critical medical condition, immobility, and inability to communicate independently.

31. The defence presented detailed testimony from DW1, DW2, and DW3, all nurses on duty in Ward 8C, and DW4, a cleaner. They consistently testified to routine night shift activities, including administering treatment, turning immobile patients, checking vitals, and securing the ward. They observed blood on the deceased and a metal bar nearby only upon discovering the deceased's body, at which point they promptly called security and police. All testified to wearing gloves, being in uniform, and taking procedural precautions, including reporting the incident immediately.
32. The ward is shown to be inherently porous, with multiple entrances, sliding windows lacking locks, and corridors providing external access. No security personnel were stationed on the floor on the night in question, and visitors had been present until after visiting hours.
33. Upon careful analysis, several critical gaps in the prosecution's case emerge. First, there is no direct evidence linking the accused to the metal bar or the injuries sustained by the deceased. No fingerprints, DNA, or eyewitness account place any of the accused in the act of assaulting the deceased.
34. Second, the prosecution has not established a motive. The accused had no prior relationship with the deceased, who was a bedridden cancer patient, and there is no evidence of animosity

or reason to commit the act. Third, the ward's layout and security deficiencies permit multiple possible avenues for an unknown third party to have gained access to the deceased. Fourth, the accused were observed performing professional duties throughout the night and acted responsibly upon discovering the deceased, which is inconsistent with the conduct of persons who had intentionally inflicted the fatal injuries.

35. The standard of proof in criminal law is proof beyond reasonable doubt (see **Woolmington v DPP [1935] AC 462**), establishing the presumption of innocence and that the burden rests upon the prosecution.

36. From the record, the evidence against the accused persons was largely circumstantial. The Court of Appeal in **Sawe v Republic [2003] KLR 364** restated that for a conviction to be founded on circumstantial evidence, the circumstances must form a complete chain pointing unerringly to the accused's guilt, and must exclude any reasonable hypothesis of innocence. Similarly, in **Musili Tulo v Republic [2014] eKLR**, the Court held that such evidence must irresistibly lead to the inference that the accused, and no one else, committed the offence.

37. In the instant case, the evidence demonstrates that while the deceased's death was violent, the prosecution has failed to eliminate reasonable doubt as to the identity of the perpetrator. In general, the circumstantial evidence did not form a complete and unbroken chain pointing irresistibly to the accused persons as joint perpetrators of the offence. The circumstantial nature of the evidence, absence of forensic linkage, porous ward security, and credible alibi and routine activities of the accused preclude a finding of guilt beyond reasonable doubt.

38. Having considered the elements of murder, being death caused by the accused and malice aforethought, the Court finds that neither has been established. The accused persons did not act with intent to kill or cause grievous bodily harm, and there is no evidence to rebut the possibility that the fatal act was committed by an unknown third party. The death, while tragic, occurred in a hospital environment where access could have been gained by others, and where the deceased's pre-existing medical condition required constant care.

39. In the circumstances, the prosecution has not discharged the evidential burden required for a conviction. The Court is bound by the principle that doubt in the prosecution's case

40. In the circumstances, the prosecution has not discharged the evidential burden required for a conviction. The Court is bound by the principle that doubt in the prosecution's case should be resolved in favour of the accused persons. Accordingly, the Court finds that the accused persons cannot be held criminally responsible for the death of Cosmas Mutunga Kenyatta.

41. Consequently, the 1st Accused, Priscilla Wairimu Njeru, the 2nd Accused, Godfrey Murithi Gachora, the 3rd Accused, Rosemary Nkonge, and the 4th Accused, Mary Muthoni Kamau, are hereby acquitted of the charge of murder. They shall be released forthwith unless otherwise lawfully held.

Orders accordingly.

**Judgement dated and delivered this 19th day of December
2025**

**D. KAVEDZA
JUDGE**

In the presence of:

Ms. Maina for the Prosecution

Mr. Ombeta for the Accused persons

Karimi Court Assistant.

ORIGINAL