

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KIAMBU**  
**CRIMINAL CASE NO. E029 OF 2021**

**REPUBLIC.....**

**PROSECUTOR**

**VERSUS**

**ANN WAITHERA KAMAU.....**

**ACCUSED**

**JUDGMENT**

**A. INTRODUCTION**

- 1.The accused person was charged with the offence of murder contrary to **section 203 as read with section 204 of the Penal Code (Cap 63)** of the Laws of Kenya. The particulars of the offence were that on or about the 28<sup>th</sup> day of April 2021 at around 9.00pm at Gitaru location in Kabete Sub-county within Kiambu County, murdered **KEVIN KAMAMI NG'ANG'A**.
- 2.The accused person was arraigned before court and took plea on 26<sup>th</sup> May 2021. She denied the charge faced and pleaded not guilty. The case proceeded to full trial with the prosecution calling ten (10) witnesses in support of their case.

## **(B) PROSECUTION CASE**

3. **PW1 Francis Nganga Kamau**, testified and confirmed that the deceased was his second born son and also knew the accused as the deceased “stay in girlfriend”. On 28<sup>th</sup> April 2021 he was at his house watching football at about 9.30pm, when he was called by his neighbor Mama Mike, who told him that there was a problem at the deceased house. He picked his torch and left to see what was happening and as he approached his sons house, he met the accused leaving the said house, while holding a knife and asked her what was the problem was but she did not respond.
4. He thereafter proceeded and entered into his deceased son house and was shocked to see him him sprawling on the floor, while bleeding profusely from the neck. He took a towel and placed it on the wound to stop the bleeding and then ran back to his house to inform his wife of what had occurred before proceeding to place another call to Mr Kimani, his neighbour to assist him take the deceased to hospital, but unfortunately, he died at the scene. He then informed the area chief and the police, who arrived shortly thereafter and took over investigations. He reaffirmed that he knew the accused as she had been in a relationship with her son for about one year.
5. Under cross examination, PW1 confirmed that he did not see the accused stab the deceased, but had met her leaving the house, while holding a knife. **PW2 Kelvin Kamau**

**Kigathi** confirmed that the deceased was his cousin and that their homes are about 100m apart. He recalled that on the material night he was at home at about 8.45pm when the deceased came to his house accompanied by carol, who also resided within the same neighborhood. He asked the deceased if, he was not worried that he could be busted by his wife for his indiscretions, but he calmed him down and told him that he would not take long. He then sat on the couch and dosed off, only to be awoken by commotion caused by the accused, who had budged into his house and found the deceased in bed (***flagrante delicto***) with carol.

6.The accused started to physically assault carol, and the deceased came out of the bed to stop her. He also intervened, held her, and the deceased took that opportunity to ran out of the house, with the accused hot on his heals. Carol had been injured on her face in the melee and he assisted her to stand up and offered her fast aid. After a while, he was called by the deceased mother, who asked him to come witness what had occurred. He dashed to the deceased house and was shocked to find that he had been fatally stabbed and as a result had died.

7.PW2 further testified that the accused and the deceased would occasionally differ, but at no time did the deceased express fear for his life. He also confirmed that after stabbing the deceased, the accused had run away and was later arrested and charged with the offence she faced before the court. Under cross examination, PW2 confirmed

that he did not see the accused stab the deceased and was just called to the scene after the incident had occurred.

**8.PW3 Caroline Nyaguthi Maina**, confirmed that the deceased was a neighbor and dear friend, and also knew the accused, who was the deceased girlfriend. On the material night, she was with the deceased at PW2's house, when the accused barged in and found them in bed. This infuriated the accused and lead her to stab her using a pair of scissors. This forced both the deceased and PW2 to intervene and they eventually managed to separate them before leading the accused out of PW2 house. Later the deceased also left, while she remained behind with PW2, who administered first aid on her injuries. Later on the same night, she was informed that the deceased had passed on and she opted to go to Gitaru- Mlango soko, where she spent the night at her friend house.

9. Under cross examination, she confirmed that she knew that the accused was the deceased girlfriend, but he too was her best friend as they had grown up together and had known each other over a long period. It was true that the accused had found them in bed with the deceased and she had proceeded to stab her using her pair of scissors, but she had opted not to report this incident to the police.

**10.PW4 Susan Njoki Njuguna**, confirmed that the deceased was her nephew, and also knew the accused as the deceased girlfriend. On the material night at about 10.00pm, she was at home and heard the deceased and her son (PW2) talk within their compound, though she did

not know what they were talking about and went on with her business. After a short while, she heard screams of the accused calling PW3 a prostitute, and when she went to see, what was happening, she found them fighting inside her son's house. In the melee, PW3 sustained an injury to her face, and she help her with water to clean it up, and also advised the accused to stop fighting so that they can talk over the issue on the following day.

11. The deceased, who was drunk left and was followed by the accused person, who came back after a while and requested her to accompany her to go and talk with the deceased, but she advised her that since he was drunk, she should hold her horses until the following morning, when they would discuss the said issue. The accused then calmly left her compound and after a short while, the deceased mother called her requested them to rush to her home, where they found the unfortunate incident which had occurred. Under cross examination, she confirmed that the deceased and the accused had a troublesome marriage but she did not witness the accused stab the deceased.

**12. PW6 Stella Wambui Mwaniki,** testified that the deceased was her neighbor, as their houses were adjustment to each other, within the same compound. She also knew the accused as the deceased live in girlfriend, with whom he had resided with for about one year. On the material night she was within her house, when she heard commotion between the deceased and the accused and when she went out, she saw the accused holding a stone,

while accusing the deceased of infidelity. The accused further threw their utensils on the floor and got hold of a knife and went into the bedroom. At that point filled with fear, she took off to go call PW1, and by the time they came back, they found that the accused had already fatally stabbed the deceased. Under cross examination, she confirmed that though she saw the accused hold a knife, she did not see her actually stab the deceased.

**13.PW6 David Rigii Samuel and PW7 John Kimani Kinuthia**, both confirmed that they identified the deceased body at PCEA Kikuyu hospital mortuary before the post mortem process was done and confirmed that the deceased suffer two stab wounds on the right side of the ribs and one stab on the neck.

**14.PW8 Dr David Kaburu Muguni**, confirmed that he was a senior medical doctor based at PCEA Kikuyu hospital and had over 20 years practice and experience in pathology. On 30<sup>th</sup> April 2021, he did conduct the autopsy on the deceased body and established that he had suffered fatal stab wounds on the right upper chest measuring 3cm to 4cm, penetrating wound on the middle chest measuring 10cm long and small cut wound on the right lower chest measuring 0.5cm long. The said wounds had penetrated into the deceased right lung and severed the blood vessels therein, thus caused it to collapse with 2.5 liters of blood lodged therein. He established that the cause of death was due to sever bleeding caused by deep stab wound inflicted by a sharp object.

**15.PW9 Cpl Odhimabo Bonface**, stated that at the time of the incident, he was attached to DCI Kabete and had received a call from OCS, Kingeroo police station at about 11.00pm informing him of a murder incident, which had occurred at Gitaru area. He mobilized his team and attended to the scene, where on arrival found a man lying on his bed with visible injuries on the right side of his neck and back. Utensils were also broken and scattered all over the floor and blood splattered on the wall of the single roomed house. On general inquires, they were informed that the deceased had a fight with his girlfriend, who unfortunately had proceeded to fatally stab him. They did document the scene and also recovered a blue handled kitchen knife which was blood stained.

**16.**They did not find the accused at the scene as she had escaped, but later on 4<sup>th</sup> May 2021 they got information from OCS Nakuru police station, that the accused had surrendered and confessed to committing the said murder. They then went and collected her and after investigations were complete, charged the accused with the offence she faced before court. He further re-emphasized that the accused conduct was indicative of her guilt and investigations had also conclusively established that it was her who had inflicted the fatal stab wounds on the deceased.

**17.PW10 Chief Inspector Julius Irungu**, confirmed that he was a gazetted forensic officer/ Scene of crime officer and was part of the team, that visited the murder scene on the

material night. After interviewing several witnesses, he documented the scene and took 22 photographs of the said scene, which also included a photo of the blood-stained knife, (suspected murder weapon), which they recovered at the scene.

18. The prosecution closed their case at that point and the accused was placed on her defence and opted to give sworn evidence.

### **C. DEFENCE CASE**

**19.** The accused gave sworn evidence and stated that prior to her arrest, she did casual work to sustain herself and resided with her boyfriend, the deceased. On the material night, she was at home at about 8.00pm and called the deceased to inquire about supper. He informed her that he was at the local shopping center-Mlango Soko, but when she went there, she did not find him and his phone was off. On the way back home, she decided to check if the deceased was at his cousin's house (PW2) and when she reached his house, she knocked on the door and when PW2 opened the door, she saw the deceased naked in bed with the PW3 and was infuriated by this discovery.

**20.** She proceeded to confront the deceased, but PW2 chased her away, and she retreated back to their house, but midway before reaching their house, went and hid inside an unfinished house, as the deceased was following after her, and PW3 too was following him demanding an explanation

as to why he had still maintained a relationship with her. She thereafter retraced her steps and went back to cry out, her frustrations to PW4, who advised her to calm down and promised to intervene on the following day to help sought out the mess.

**21.** DW1 further stated that she did not go back to her house as she had seen the deceased and PW3 enter into their compound and later on the same night got a lift from a trucker who took her to Gitaru and then to Nakuru, where she stayed for a few days, before being stopped by a stranger, who informed her that she was on social media, where it was alleged that she had killed her husband. She thereafter went and surrendered herself at Nakuru police station and was later transferred back to Kingeroo police station.

**22.** It was her further evidence that her relationship with her deceased husband was cordial, with normal small differences, common in all relationship's, but strenuously denied stabbing the deceased, given that she did not enter into their compound on the material night after leaving PW2 house. Under cross examination DW1 reiterated her evidence and insisted that her version of events of the material night were accurate.

#### **D. DETERMINATION**

**23.** I have considered the evidence on record and submissions filed by both parties, and the question that arises before this court is whether the prosecution has proved beyond reasonable doubt that the accused person herein

participated in the murder of **Kevin Kamami Ng'ang'a**, the deceased herein.

24. **Section 203 of the Penal Code** defines the offence of murder as follows:

***“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”***

25. In the case of **Republic v Okwara (Criminal Case E015 of 2023) [2024] KEHC 1360 (KLR)** the court stated as follows;

***“Mens rea in murder causes takes the form of malice aforethought, and the elements are set out in section 206 of the Penal Code. They relate to intention and knowledge. Intention to kill or cause grievous harm or to commit a felony. Knowledge that the act or omission causing death could cause such death, and being indifferent to the consequences of the act or omission. Intention and knowledge are mental elements. One forms an intention, in their mind, to do or not to do something, and has knowledge, within his mental faculties about something. So, the mental element for the offence of murder is either intention or knowledge.***

***Has the prosecution adduced evidence to establish such intention or knowledge, that***

***the accused had formed an intention to kill or cause grievous harm or to commit a felony, or knew that whatever he was doing was likely to cause death, but remained indifferent to the consequences? Well, the mens rea of an offence is usually to be inferred from conduct or action, being a mental element, unless the intention is voiced by the perpetrator.”***

26. The Court of Appeal at Nyeri in **Criminal Appeal No. 352 of 2012 Anthony Ndegwa Ngari vs. Republic [2014] eKLR**, summed up the elements of the offence of murder as follows: -

- a. the death of the deceased and its cause;***
- b. that the accused committed the unlawful act which caused the death of the deceased;***
- and***
- c. that the accused had malice aforethought.***

27. In **Joseph Kimani Njau vs Republic (2014) eKLR**, the Court of Appeal in concurring with an earlier finding of that Court (but differently constituted) in **Nzuki vs Republic (1993) KLR 171**, held as follows: -

***Before an act can be murder, it must be aimed at someone and in addition, it must be an act committed with one of the following intentions, the test of which is always subjective to the actual accused; -***

***i. The intention to cause death;***

***ii. The intention to cause grievous bodily harm;***

***iii. Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from his acts, and commits those acts deliberately and without lawful excuse with the intention to expose a potential victim to that risk as the result of those acts.***

***It does not matter in such circumstances whether the accused desires those consequences to ensue or not in none of these cases does it matter that the act and intention were aimed at a potential victim other than the one succumbed. The mere fact that the accused's conduct is done in the knowledge that grievous harm is likely or highly likely to ensue from his conduct is not by itself enough to convert a homicide into a crime of murder. (See Hyman vs. Director of Public Prosecutions (1975) AC 55".***

28. I will now proceed to interrogate each issue.

***(i) The death of the deceased and its cause.***

29. Every homicide is unlawful unless authorized by law or is excusable under the law. **See Sharma Pal Singh [1962] EA**

**13, see also Guzambizi Wesonga v Republic [1948] 15 EACA 63** where the court held:

***“Every homicide is presumed to be unlawful except where circumstances make it excusable or where it has been authorized by law. For a homicide to be excusable, it must have been under justifiable circumstances, for example in self-defense or in defense of property.”***

30. It is common ground that **Kevin Kamami Ng’ang’a**, died on the night of 28<sup>th</sup> April 2021 as a result of fatal stab injuries sustained from an Assault. This was confirmed by all the witnesses and especially by the evidence of Dr David Kaburu Maguna (PW 8), the pathologist who conducted the post mortem on 30.04.2021. He confirmed that the deceased sustained three stab wounds, one on the neck and two to the right side of the chest, which wounds punctured the deceased lungs and caused him to bleed to death. The post mortem report was produced into evidence as Exhibit P3.

31. This court therefore finds as a fact that the deceased died as a result of the said extensive injuries sustained as enumerated above.

**(ii) Whether it has been proved that the accused committed the unlawful act which caused the death of the deceased:**

32. On the material night, PW6 the accused immediate/next door neighbor heard commotion between the deceased and the accused and when she went out to check on what the issue was found the accused holding a stone and was accusing the deceased of infidelity. She thereafter picked a knife and charged into their one roomed house and later merged while still holding the said knife. At that point PW6 rushed to go call PW1, the deceased father, who also rushed to the scene and also found the accused outside their house, and when he entered therein, he found that his son had been fatally stabbed on the neck and was bleeding profusely. He placed a towel on the said wound to stop the bleeding and sought means of rushing the deceased to hospital, but he unfortunately succumbed to his injuries while still at the scene.
33. This evidence directly implicates the accused as the person who inflicted the fatal stab wounds upon the deceased and her defence, that she was innocent and did not follow him back home after finding him in a compromising position with PW3 holds no water and is plainly untruthful. I therefore find and hold that it is the accused who committed the unlawful act which caused the death of the deceased.

**(iii) Malice Aforethought**

34. Having found that the prosecution has proved *actus reus*, the other issue for determination is whether malice aforethought can be inferred from the prosecution's evidence presented. The offence of murder is complete

when “**malice aforethought**” is established. **Section 206** of the **Penal Code**, provides that:

***“(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.”***

35. It is sufficient to say that the mental element required by **section 206 of the Penal Code** can be equated to broad guidelines set out in the case of **Tubere s/o Ochen vs. Republic [1945] 12 EACA 63:**

***“The weapon in possession of the accused while carrying out the intention, the manner in which it was used to strike the human***

***being whether one off blow or violent multiple blows, the conduct of the accused in fleeing from the scene afterwards, the permanency or dangerous severity of the bodily harm and that cumulatively the death of the deceased must ensue from the bodily harm intentionally inflicted.”***

36. In assessing the weight to be given to intention as an element of murder, the relevant circumstances must be considered as to whether the appellant foresaw the real or substantial risk and the consequences of targeting the part of the body that may result in the fatal injuries suffered by the deceased.

37. A similar statement of Law was made in the persuasive authority of **S. vs. Sigwahla 1967 4 SA 566** in which the court stated:

***“The expression intention to kill does not in Law, necessarily require that the accused should have applied his will to compassing the death of the deceased. It is sufficient if the accused subjectively foresaw the possibility of his act causing death and was reckless of such a result. This form of intention is known as a dolus eventualis as distinct from dolus directus.”***

38. The deceased suffered three fatal stab wounds to the neck and chest. The neck injury was 3cm to 4cm deep, the mid chest injury ran 10cm deep, while the last injury to the lower chest too was 0.5cm deep. The said injuries severed the blood vessels in the deceased right lung and caused it to collapse
39. From the above analysis of the injuries inflicted, it is clear that the accused did not have any other intention other than to inflict grievous harm upon the deceased. It is my finding that the accused person knew or ought to have known that her action would result in death, and it can be safely inferred from the nature of injury inflicted on the deceased that the accused person's action was premeditated.
55. In the circumstances I am persuaded beyond reasonable doubt that the prosecution has proved their case and specifically the presence of malice aforethought on the part of the accused too has been proved.

### **G. DISPOSITION**

56. Accordingly, it is my finding and holding that the prosecution has proved all the ingredients of the Information of murder against the subject herein, **ANN WAITHERA KAMAU** beyond reasonable doubt and

convicted her accordingly under section 215 of the Criminal Procedure Code.

57. Sentencing will await the filing of a pre-sentence report by the probation and aftercare services department, within the next 21 days.

58. It is so Ordered.

**Judgment, signed at KIAMBU this 7<sup>TH</sup> day of JANAURY, 2026.**

**FRANCIS RAYOLA OLEL  
JUDGE**

**Judgment read and delivered in open court on this 7<sup>TH</sup> day of JANAURY 2026.**

**In the presence of:-**

.....Accused

.....For O.D.P.P

.....Court Assistant

ORIGINAL