

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

CRIMINAL CASE NO. E012 OF 2024

REPUBLIC.....ODPP

VERSUS

PETER IRIA KAMAU.....ACCUSED

JUDGMENT

- 1. Peter Iria Kamau**, the Accused, is charged with **Murder contrary to Section 203 as read with Section 204 of the Penal Code**. The particulars of the offence are that on the 1st day of November, 2024, at Lokiriam Village, at Uaso Narok Sub-Location, Mutitu Location, Nyahururu Sub-County within Laikipia County, you murdered Eunice Wangare Kamau (Deceased).
2. Having denied the information presented by the Director of Public Prosecutions, he was taken through full trial. To prove the case the prosecution availed ten(10) witnesses.
- 3. PW1 Dr. Cyrus Njoroge Ng'ang'a** performed the autopsy to establish the cause of death. He concluded that the cause of death was severe head injury secondary to blunt head trauma that caused massive epidural hematoma.
- 4. PW4 R.W.K.** a sister to the deceased and the Accused, respectively was in the kitchen when the Accused walked in with his vegetables. Their mother entered the kitchen but

inadvertently stepped on the vegetables. The act angered the Accused who picked a piece of firewood and hit the 'sufuria' (cooking pan) that had vegetables and another one that had some other variety of vegetables. The deceased who had finished milking told the Accused to go cook his vegetables from his house. He left going to his house then returned with a panga which he used to chase their mother from the kitchen and hit the deceased with the panga on the abdomen. As they continued arguing he also hit D.K. on the neck. All along he would hit them with the flat side of the panga. All over a sudden he picked a stone and aimed at the deceased but it missed. Then he picked a second stone which he threw and it hit the deceased on the head. She fell down and started bleeding.

5. Their mother screamed and people answered her call of distress. The Accused ran away and disappeared into the maize farm. Neighbours got a motorcycle and rushed the deceased to hospital but on 2nd November, 2024 they got a report of her demise.

6. PW3 Lucy Erpon, the mother of both the deceased and Accused stated that she was in the main house when she heard some altercation in the kitchen. When she went outside the deceased complained that the Accused had assaulted her son. All over a sudden she saw the Accused pick a stone with which he hit the deceased. She held the deceased and both of them fell down. She screamed and

neighbours including Kithinji Moses Ekitela and Charles responded. Moses got a motorcycle which took the deceased to hospital. Her husband and father of the deceased was informed of the tragedy and he followed those who had taken the deceased to hospital.

7. Further, it was her testimony that the Accused always threatened to kill her. That he terrorizes then and strangles Rachel his sibling a matter that had been reported to the Chief.

8. PW4 D.K. the son of the deceased was in the kitchen with his mother the deceased, aunt Rachel and Sharon and his sister Mary Wanjiku. That when the Accused arrived they were cooking their vegetables but he insisted on being let to cook his. Upon them declining he took a lit piece of firewood and used it to hit the pan hence dirtying their vegetables. And, when his grandmother went to the kitchen she accidentally stepped on his vegetables. He went to his house and returned with a panga. He saw him swing the panga that he used to hit the deceased and also hit him. As they urged him to go away he threw a stone that hit the deceased on the head who fell down.

9. PW5 Moses Ekitela Mutunga heard screams and on going to the neighbour's home he found one of Kamau's daughters and her mother sitting down and he was told to go get a motorcycle which he did.

- 10. PW6 Charles Akon** went to the scene on hearing screams. He learnt of the deceased having been assaulted by the Accused.
- 11. PW7 Samuel Kimweri Karanja** the boda boda rider was called by Moses Ekitela and he went to assist. He stated that the deceased was bleeding profusely from the head and he took her to Wanjiku Hospital but it declined to accept her because of the excessive bleeding. Her father arrived and took her to another hospital.
- 12. PW8 John Githinji Kamunya** heard D.K. calling out saying his mother had been killed. He run to the home but found the deceased having been moved to the roadside being supported by people. He joined people who took her to Nyahururu Hospital, where she was admitted and sutured. However, the following day her father told him that she had passed on.
- 13. PW9 David Kamau Kabachia** the father of both the deceased and Accused found the deceased at Wanjiku Centre in a delicate state and moved her to Nyahururu Hospital where she died. On cross examination he said that it took them one hour prior to reaching hospital as there were no vehicles and they used a motorcycle.
- 14. PW10 No. 98994 PC Edwin Musila** investigated the case and caused the Accused to be charged.
- 15.** Upon being placed on his defence the Accused stated that on the fateful date he did casual work, of tilling land

and upon being paid at 4.00pm he went to the club and drunk alcohol(Keg), some seven cups. He became hungry hence bought vegetables and went home where he entered the kitchen and found his sisters, Rachel Wanjiru, Eunice Wangare and her son D.K. He found them still cooking hence he decided to go to his house to let her finish cooking. But, when he stood he accidentally stepped on the firewood and some ash spilled into the food on the cooking fire. His relationship with his sister being disharmonious they were angered. D.K. picked a stick and hit his shoulders and he slapped him.

16. That his sisters armed with sticks attacked him, and he retracted. That he had a panga that he used to defend himself by hitting the sticks. He had concealed it in his trousers at the back as he could not enter the club if they saw it. They overpowered him and he picked a stone and threw to scare them off. It was dark hence he did not realize he had hit someone. That he did not see his mother who was not in the kitchen. But, when he heard screams he decided to go to the club at the Maili Saba Centre, and continued taking alcohol only to be woken up by workers in the morning and he decided to go to work.

17. That while spreading maize at 1.00pm he was arrested by members of public who took him to the police station, Maili Saba. That is when he learnt of his sister's death.

That when he threw the stone he did not aim at a particular person.

18. At the close of the defence case submissions were filed by the defence that I have taken into consideration as well as evidence on record.

19. **Section 203 of the Penal Code** provides that;
Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.

20. In **Anthony Ndegwa v Republic [2014] KECA 424 (KLR)** the Court of Appeal stated as follows;

“For the offence of murder, there are three elements which the prosecution must prove beyond reasonable doubt in order to secure a conviction. They are: (a) the death of the deceased and the cause of that death; (b) that the accused committed the unlawful act which caused the death of the deceased and (c) that the Accused had the malice aforethought.”

21. Issues to be determined are hence;

- ***Whether death was committed by an unlawful act and of malice aforethought.***
- ***Whether the Accused was the perpetrator.***

22. Evidence on record was that the deceased could not be treated at a health facility at Kwa Wanjiku. She was admitted on the same date of the act, 1st November, 2024

at Nyahururu County Referral Hospital with a head injury and left frontal deep scalp laceration which was sutured at the emergency department. A CT Scan was to be done the following day but she died at 7.00pm. The body was identified to PW1 by PW10 her father and two (2) others. It was opined by Dr. Ng'ang'a that the cause of death was severe head injury secondary to blunt head trauma that caused massive epidural hematoma. This was proof of the fact of death.

- 23.** Malice aforethought is defined by **Section 206 of the Penal Code** as follows;

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.

24. The prosecution had the onus of establishing one or more of the ingredients provided in law. It is urged by the defence that in the instant case malice aforethought is remote as after the accused was denied the opportunity to cook his food he was moving out when the accident occurred. That he stepped on a firewood which was at the fireplace then there resulted the squabble that resulted into the death of the deceased. That the deceased and Rachel were undoubtedly annoyed by the conduct of the Accused and confronted him.

25. That attempts by the Accused to wade off Rachel and Lucy and deceased by threats with the panga did not scare them and he only threw the stone to find an escape route, which was an act in self defence. Reliance in this regard was placed on the case of ***Bethwel Wilson Kibor v Republic [2019] KECA 143 (KLR)*** where the Court of Appeal held that;

“I am satisfied from the evidence on record that the deceased and the accused person fought and injured each other.

Unfortunately, the deceased sustained more serious injuries to which he succumbed. Though injured, the accused person survived and he was

subsequently charged with this offence. Although my finding is that the accused person was responsible for the injuries that culminated into the death of the deceased, he and the deceased fought. There was no mens rea or malice aforethought and the accused person may have been fighting back in self defence or on provocation. I agree with counsel for the accused that the offence disclosed in these circumstances is that of manslaughter and not murder as charged. Accordingly, I invoke the provisions of section 179(2) of the Criminal Procedure Code and find the accused person guilty of the lesser but cognate charge of manslaughter contrary to section 202 as read with section 205 of the Criminal Procedure Code and convict him accordingly.”

26. This is a case where the accused admits having thrown the stone that hit the deceased that caused the injury that she succumbed to. This is however argued to have happened when the Accused acted in self defence. In his defence, the Accused also stated that he had been imbibing alcohol on an empty stomach and by the time he was going home he had taken 7 cups of Keg. What he did not allege was whether his thinking was impaired at the time. If the thinking was impaired, the criminal responsibility would be diminished.

27. Section 13(1)(4) of the Penal Code provides thus;

(1) Save as provided in this section, intoxication shall not constitute a defence to any criminal charge.

(4) Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence.

28. In Said Karisa Kimunzu v Republic [2007] KECA 424 (KLR) the Court of Appeal held that;

“But under subsection (4) the court is required to take into account the issue of whether the drunkenness or intoxication deprived the person charged of the ability to form the specific intention required for the commission of a particular crime. In a charge of murder such as the one under consideration, the specific intention required to prove such an offence is malice aforethought as defined in section 206 of the Penal Code. If there be evidence of drunkenness or intoxication then under section 13(4) of the Penal Code, a trial court is required to take that into account for the purpose of determining whether the person charged was capable of forming any intention, specific or

otherwise, in the absence of which he would not be guilty of the offence. In the circumstance of this appeal, the learned trial Judge was required to take into account the appellant's drinking spree of the previous night and even that morning in determining the issue of whether the appellant was capable of forming and had formed the intention to kill his son."

- 29.** In his defence the Accused narrated vividly what transpired from the time he entered the kitchen upto when he was arrested. This was evidence of the Accused having been in full control of his senses hence capable of thinking properly, hence the question whether he had formed the intention to kill. What was the Accused person's state of mind then?
- 30.** PW3 the mother of the Accused portrayed him as a problematic person who was not good; and, that he always threatened to kill her. That he sits on her bed, terrorizes them as a family and even strangles Rachel his sister. In his defence the Accused said that he loves his mother. That notwithstanding, on the fateful date he arrived home with his vegetables that he wanted to cook.
- 31.** According to PW12 and PW4, PW3 accidentally stepped on the vegetables. The act provoked the Accused who took firewood and hit the pan on the cooking fire hence dirtying the vegetables that were being cooked. His siblings and nephew told him to go cook at his house but he returned

welding a panga. The Accused argues that they chased him away with sticks such that he was threatened hence he collected a stone which he threw at no particular individual.

32. It is admitted that his siblings had sticks which they picked after the Accused returned with a panga that he used to hit the deceased and her son. They ganged up against him that is when he retreated and picked a stone that he threw and it hit the deceased. The unlawful act by the accused resulted into serious injury that the deceased sustained and later succumbed to. What transpired does not prove the fact of self defence by the Accused.

33. What is apparent is the fact of the intention to kill having not been formed at the time of the Accused's arrival wanting to cook vegetables. When he believed that he was offended, he used a weapon (panga) which he however did not use to cut the victim. When he ran away and picked stones which he threw at the siblings it is unlikely that he intended to kill or even cause grievous harm. Had the prosecution availed the stone that he used as evidence the court would have formed the opinion whether it was the kind of stone that would obviously be one that would cause serious injury. Without such evidence the court is left to speculate. Evidence adduced does not disclose the legal threshold of malice aforethought.

34. Nonetheless, death resulted from the act. **Section 202 of the Penal Code** provides that;

(1) Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed manslaughter.

(2) An unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily harm.

35. The Accused was a reckless individual. He admits having thrown stone(s) and then disappeared to where he had come from, a pub, where he slept, then proceeded to work oblivious of what happened after he ran into the maize plantation. This does not absolve him from blame.

36. Section 179 of the Criminal Procedure Code provides thus;

(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and the combination is proved but the remaining particulars are not proved, he may be convicted of the minor offence although he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he was not charged with it.

37.Although the Accused was not charged with the offence of manslaughter, evidence adduced by the prosecution constitute and support a minor offence which is cognate to murder.

38.Therefore, I reduce the charge of murder to a lesser one of manslaughter. In the result I find the Accused guilty of Manslaughter and accordingly convict him pursuant to the provisions of **Section 202 as read with Section 205 of the Penal Code.**

39.It is so ordered.

Dated, signed and delivered virtually this 22nd day of January, 2026.

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L.N. MUTENDE
JUDGE