



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYANDARUA
CRIMINAL CASE NO. 65 OF 2023

REPUBLIC.....PROSECUTOR

VERSUS

CHRISTINE GATAKAA BUNDI..... 1ST ACCUSED

JACOB NJERU WEVETI..... 2ND ACCUSED

JUDGMENT

1. Christine Gatakaa Bundi and Jacob Njeru Weveti are 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 13th day of September 2022, at Magumu location, in South Kinangop Sub-County of Nyandarua County, they murdered Josiah Macharia Kiiru.
3. Around 3 a.m., the deceased's children heard a loud noise in their parents' bedroom and their father calling out the first accused. When they went to check, their mother told them to return to bed. The next day, they found out that their father had died. Later, the two accused were arrested and charged with his murder.
4. Each accused denied any involvement in the death of the deceased herein.
5. The issues to be determined are:
 - a) Whether any or both accused inflicted the fatal injuries on the deceased; and
 - b) Whether the offence of murder was established against the accused.
6. Although PC Edwin Nganje (PW7), who investigated this case, mentioned that PW1 implicated the 2nd accused, I do not see such evidence in the record. There is no additional evidence linking him to the offence. It seems he was charged based on suspicion. The Court of Appeal in the case of **Sawe vs Republic [2003] KLR 354**, held as follows:

Suspicion, however strong, cannot provide the basis of inferring guilt, which must be proved by evidence beyond a reasonable doubt.

7. Consequently, the second accused is acquitted.
8. Agnes Mumbi Macharia (PW1), the daughter of the deceased and the 1st accused, testified that on September 13, 2022, her father arrived home at 7 p.m. She described him as being intoxicated but not overly drunk. She served him food as her mother had requested and then went to bed.
9. Around 2 a.m., she heard a loud bang and a scream from her father. He called the accused three times. Together with her sister, PW2, they went to investigate. When they reached the bedroom door, their mother instructed them to return to sleep. The next morning, they discovered the door was bolted from the outside. They shook it, and it opened. Their mother told them to claim that their father had painful teeth if anyone asked about what happened.
10. Beatrice Wanjiru PW2 is PW1's sister. She testified similarly with minor differences that, in my opinion, do not undermine her credibility.
11. Dr. Titus Ngulungu (PW6) performed the post-mortem examination of the deceased's body. He formed an opinion that the cause of death was asphyxia due to manual strangulation.
12. Although Christine Gatakaa Bundi (accused 1) denied any involvement in the death, the record shows overwhelming evidence that she was the only person with the deceased in their bedroom, and she must be the one who caused his death.
13. To secure a murder conviction, the prosecution must prove malice aforethought. According to 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).

14. 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.

15. No evidence of the motive behind the offence was adduced. No evidence was forthcoming of what may have transpired between the two before the deceased was killed.
16. After reviewing the evidence, I conclude that the prosecution has not proven the offence of murder against the accused. However, they have sufficiently proved the lesser charge of manslaughter beyond a reasonable doubt. As a result, I replace the murder charge with manslaughter. The accused is acquitted of murder but found guilty and convicted of manslaughter under Section 202 read with Section 205 of the Penal Code.

Delivered and signed at Nyandarua, this 19th day of February 2026

KIARIE WAWERU KIARIE

JUDGE