



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MARSABIT
CRIMINAL CASE - MURDER NO. E001 OF 2024

REPUBLICPROSECUTION

=VERSUS=

DOTI WAKO SORA.....
ACCUSED

JUDGEMENT

A. INTRODUCTION

- 1.The accused, **DOTI SORA WAKO**, is charged with the offence of murder contrary to ***section 203 as read with section 204 of the Penal Code***. The particulars were that on 13th day of October 2023, at Diibu Dadacha area within SOLOLO Sub county area of Marsabit county, Murdered **SAFAO WAKO**.
- 2.The gist of the prosecution's evidence was that the accused maliciously attacked his mother, without provocation and proceeded to inflict fatal panga cut injuries, which resulted in her losing a lot of blood and thus died on the spot.

B. EVIDENCE

3. **PW1 Fatuma Buyatu Baldesa**, testified that the deceased was her immediate neighbour and knew the accused, who was her son. On the material day they went to church with the deceased and came back at about 1.00pm, whereupon they relaxed within her compound until 3.00pm, when the deceased opted to go to her home, which was about 50m away. As the deceased entered her compound, she saw the accused approaching the home and followed his mother into their compound and shortly thereafter she heard piercing screams from the deceased.
4. She rushed to go assist her and was shocked to find the accused literally hacking his mother using a panga, all over her head, neck and hands. When the accused saw her, he turned on her and threatened to also harm her forcing her to take off in fear of her life, with the accused in hot pursuit. At some point he stopped his pursuit, went back to the crime scene, where he dropped the panga and took off toward Sololo town. she went back to the crime scene, while screaming for help and unfortunately found that her neighbour and friend lying on the floor outside her house and had already succumbed to the injuries sustained.
5. It was her further evidence that the accused and his mother always had domestic disputes, because the accused had refused to work and always demanded food from his mother and when she lacked, he would assault her. Under cross examination she reiterated her evidence and confirmed that

she was the first person to respond to the deceased's cry for help on the material day. She further reaffirmed that she had also witnessed previous incidences, where the accused had assaulted the deceased.

6. **PW2 PC Malich Wario**, also confirmed that he was a neighbour to the deceased and recalled that he was at home on the material day at about 3.00pm, when he heard the deceased cry for help and instinctively dashed to go see what the issue was. He met the accused chasing PW1, while carrying a panga but at some point stopped and went back to the crime scene, where he dropped the panga and escaped toward Sololo town. They went to the deceased home and found that she had sustained deep panga cut wounds especially on the right side of her head, hands and unfortunately had died on the spot. Other neighbours, the area chief also came to the scene, and the police came and after processing the scene, took the deceased body to the mortuary. They also took the panga, the accused had dropped, which he identified before court.

7. **PW3 Wario Jarso Kosi** testified that the deceased was her elder sister, a widow blessed with three children. On 13.10.2023 at about 3.30pm, he received a phone call from one, Guracha Jilo, who informed him that the accused had murdered his mother. He rushed to the scene, where he confirmed that unfortunate incident and saw her body lying outside her house covered in a lessa. He observed and noted that she had sustained panga cuts on her head, neck, & hands. He further confirmed that the deceased had a difficult relationship with the

accused, who refused to work and always demanded maintenance/food from his mother.

8. Under cross examination, he confirmed that he did not witness the incident occur and was sure that the deceased had made several reports to the police, the last being on 09.10.2023 relating to threats on her life by the accused person. **PW4 Wario Kosi**, the deceased pastor and nephew also confirmed that the deceased attended church on the material day in the morning and he was called later at about 4.00pm with the dreadful news that the accused had attacked and inflicted fatal injuries on his mother. He rushed to the local police patrol base to report the incident and carried the police to the incident scene. He further confirmed that the deceased had on several occasions confided in him the difficulties she faced in handling the accused, who would demand for food but not work or contribute towards the same.
9. **PW5 Cpr Hussein Tulicha** attached to DCI, Moyale confirmed that he was the investigating officer of the case and after receiving a report of the incident, on instructions of his boss, when to the scene at about 4.30pm, while accompanied by his colleagues. They found the deceased lying outside her house in a pool of blood and had deep cuts on her head, neck and hands. They processed the scene and took the body to Sololo Mission hospital, for postmortem examination. He proceeded to record all witness statements and later had the accused arrested from Ethiopia where he had run to hide amongst the relatives.

10.

At the scene, they had recovered the blood stained panga, which he produced into evidence, together with the postmortem report, which confirmed the cause of death to have been caused by pulmonary arrest due to the deceased vital veins and arteries being severed on her neck. Under cross examination he confirmed that they did not do DNA examination of the blood found on the panga and he had relied on the evidence of the eyewitnesses who had seen the accused harm his mother. He also did not investigate the state of mind of the accused at the time of commission of the offence.

11. The prosecution at that point closed their case, and in defence the accused opted to give sworn evidence. He stated that on the material day he was at home but could not remember what occurred nor did he recall killing his mother. He was later arrested in Ethiopia, and that is when he was informed of what had previously transpired. Under cross examination, he acknowledged that PW1 was their neighbour, and that they did not have relatives in Ethiopia and while there would survive by his own means.

C. DETERMINATION

12. I have considered the evidence adduced by both parties and submissions on record, and the question that arises before this court is whether the prosecution has proved beyond reasonable doubt that the accused person herein had a hand in the murder of his mother, **SAFAO WAKO** , the deceased herein.

13. **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.”

18. Arising from the foregoing, the ingredients of murder were explained in the case of **Roba Galma Wario vs. Republic [2015] eKLR**, where the court held that:

“For the conviction of murder to be sustained, it is imperative to prove that the death of the deceased was caused by the appellant, and that he had the required malice aforethought. Without malice aforethought, the appellant would be guilty of manslaughter, as it would mean the death of the deceased during the brawl was not intentional.”

19. In **Republic vs. Mohammed Dadi Kokane & 7 Others [2014] eKLR**, the elements of the offence of murder were listed by M. Odero, J as follows: -

- 1) The fact of the death of the deceased.***
- 2) The cause of such death.***
- 3) Proof that the deceased met his death as a result of an unlawful act or omission on the part of the accused persons, and lastly***
- 4) Proof that said unlawful act or omission was committed with malice aforethought.***

20. In **Mombasa High Court Case Number 42 of 2009 between Republic vs. Daniel Musyoka Muasya, Paul Mutua Musya,**

and Walter Otieno Ojwang, the court expressed itself as hereunder:

“The prosecution, therefore, is required to tender sufficient proof of the following three crucial ingredients in order to establish a charge of murder:

a) Proof of the fact as well as the cause of the death of the deceased persons.

b) Proof that the death of the deceased resulted from an unlawful act or omission on the part of the accused persons.

c) Proof that such unlawful act or omission was committed with malice aforethought.”

21. I will now proceed to interrogate each issue.

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

22. It is common ground that **SAFAO WAKO** died on 13th October 2023, within Diibu Dadacha area within Sololo Sub County of Marsabit county, having sustained fatal panga cut injuries. PW1 saw the incident occur, while PW2 , 3, 4 and 5 all went to the scene and observed the deceased body, which had panga cut wounds on the head, neck and hands. PW5 also produced the postmortem report, which confirmed that the deceased died of pulmonary arrest due to severe cut on her carotid veins and arteries on both sides of the neck

23. This court therefore finds as a fact that the deceased died as a result of fatal panga inflicted injuries that severed her vital arteries and veins leading to her getting a pulmonary arrest.

(ii)

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

24. PW1 saw the accused follow his mother into their compound and immediately she started to scream for help dashed to go assist her. She literally found the accused cutting his mother with a panga just outside her house and when the accused saw her, he turned on her and started to physically chase after her, while also attempting to cut her with the same panga. Fortunately for her, she out sprinted him and after a certain point he stopped chasing after her, returned to the crime scene, where he dropped the murder weapon and took off toward Sololo.
25. PW2 also heard the deceased crying and when he went to check on what was happening found the accused chasing after PW1. He too, took cover and when the accused had taken off, they rushed back to the scene and found that the deceased had unfortunately passed on
26. The inescapable cold truth is that the accused person hacked his mother to death as witnessed by PW1 and thus it has been proved beyond any reasonable doubt that he is the one who unlawfully caused her death.

(iii) Malice Aforethought

27. 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.”

28. 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.”

29. 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.”

30. 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.
31. The accused unprovoked inflicted several fatal panga cuts on his mother's neck and head that ultimately lead her to bleed to death. It is my finding that the accused person knew or ought to have known that his action would result in death, and it can be safely inferred from the nature of the injury inflicted on the deceased that the accused person's action was premeditated.
32. The accused in defence stated that he did not know what occurred on the material day and there was suggestion in cross examination of PW5 that the accused must have committed the offence having suffered from a mental breakdown. While this is a valid defence, no concrete evidence was led to prove this fact. The accused prior behaviour of always confronting/assaulting his mother to demand for food as witnessed and confirmed by PW1, PW3 & PW4 do not support the alleged mental illness, as his actions were linked to specific demands by a grown up who had refused to work and fend for himself.
33. Further after the incident, the accused took off and was able to go unaided to Ethiopia, where he hid for several months before

being repatriated to face charges of murder. A mentally ill person would not have been able to do so.

34. 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 established.

G. DISPOSITION

35. Accordingly, it is my finding and holding that the prosecution has proved all the ingredients of the Information of murder against the subject herein, **DOTI WAKO SORA**, beyond reasonable doubt and convicted him accordingly under **section 215 of the Criminal Procedure Code**.

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

37. It is so Ordered.

Judgment, signed at MARSABIT this 18th day of FEBRUARY, 2026.

FRANCIS RAYOLA OLEL
JUDGE

Judgment read and delivered in open court on this 18th day of FEBRUARY 2026.

In the presence of:-

Present in courtAccused

Mr. MburuguFor O.D.P.P

Mr. JarsoCourt Assistant

ORIGINAL