



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL CASE NUMBER E044 OF 2023

REPUBLIC

ODPP

VERSUS

JOSEPH WAHOME.....

ACCUSED

JUDGEMENT

1. The accused is charged with **Murder Contrary to Section 203 as read with Section 204 of the Penal Code.** The particulars of the information relating to the charge state that on diverse dates between 18th and 20th October 2023 at Ahero village, Nakuru North Subcounty, within Nakuru County he murdered John

Mwangi . The accused entered plea of “Not Guilty” to the offence.

2. The prosecution called 8 witnesses. PW1 is the deceased’s widow. She testified that on 20/10/2023 she received a call from her stepson, the Accused, who informed her that the deceased was very sick and asked her to go and see him. The deceased was living with the Accused at Ahero, Nakuru County. PW1’s son (PW2) was also informed and he went to see the deceased ahead of his mother. He later rang up PW1 to relay sad news that the deceased had died. She and her other children rushed to Ahero where they found the deceased dead in the house. The body was in his bed. According to PW1, the deceased was bleeding from the mouth and the blood stained the bed sheets. The body was taken to the mortuary and the matter reported to the police.
3. According to PW1 the Accused and the deceased used to differ, but it is nothing out of the ordinary. The two lived in a three - bedroom house, each sleeping in his room. PW1 spoke of seeing some damage on the door to

the deceased's room. There was no dispute in the family over property.

4. PW2 confirmed PW1's evidence as to receipt of information regarding the deceased's ill health. The witness was among those who saw the deceased dead in his house. The Accused is said to have related that the deceased had been unwell. PW2 added that the Accused gave some drugs the deceased was allegedly taking to the police for their investigations.
5. The other siblings of PW2 testified as PW3 and PW4 stating that they also received the report about the deceased's demise.
6. PW5 told the court that he was the village elder of the area in which the deceased and the Accused resided. On 18/10/2023 at around 7:00 p.m. the deceased is said to have visited PW5's shop and bought some items. The following morning the Accused informed him of the deceased's death.
7. The witness further stated that the deceased had complained several times to him that the Accused was

threatening to kill him. He wanted the Accused to be removed from his home.

8. PW6 told the court that he was a close friend of the deceased and also received news of his death. He was among those who saw the deceased dead in his home. The witness stated that the deceased never told him of any death threats made by the Accused. To the contrary the deceased is said to have mentioned that the Accused was one of his favourite children.
9. The deceased's neighbor (PW7) told the court that he too heard the news of the death and saw the deceased's body in his house. The deceased had never mentioned any threat to his life to him. The witness had not heard of any quarrel between him and the Accused either.
10. PW8 is the Investigating Officer. During investigations into the case he and other officers visited the deceased's home where relevant photographic evidence was taken. He produced the photographs together with post-mortem examination report dated 22/10/2023 on the deceased's body.

11. According to the witness his investigations showed that members of the deceased's family did not enjoy good relationship. There was no property dispute, however.
12. The post- mortem report showed that the deceased had bruises to the lips and some teeth were missing. More bruises were on the upper chest and the neck. Frictional burns were observed on the right upper limb. There were no defence injuries. The Pathologist (Dr. Ngulungu Titus) opined that the cause of death was "Asphyxiation" due to pressure to the nose, neck and mouth. Blood and finger nails were extracted from the body for DNA profiling and matching.
13. The Accused gave sworn evidence and confirmed that he lived with the deceased at the material time. On 18/10/2023 the deceased woke up at 9:00 a.m. The Accused had himself woken up earlier and performed domestic chores.
14. The following day on 19/10/2023, the Accused said he left home to carry out his trade and returned in the afternoon at around 12:30 p.m. he did not see the deceased but believed that he was in his room since he

spent most of his time indoors. The Accused again left home to collect firewood and came back at around 6:30 p.m. When he took food to the deceased at around 9:30 p.m, he did not respond to his knocks on the door. He called out for him but he was met with silence. He decided to break into the room using a wire and found the deceased in his bed lying on his stomach. He was unresponsive and his body was cold. The Accused told the court that he screamed for help and rang up his siblings to inform them of their father's condition.

15. The Accused continued to state that the deceased appeared to have bitten his lip and his nose was injured. He was aware that he was suffering from pneumonia for which he was on medication.
16. The Accused denied having had any differences with the deceased. His mother had died after which he briefly lived with PW1, his stepmother. When differences arose between them, they parted ways and he went to live with the deceased. The Accused denied killing or causing the deceased's death.

17. The Accused called one witness, his elder sister (Virginia Mwangi). She told the court that she spoke with the deceased on 18/10/2023 and felt that he was breathing heavily. She knew that he was down with pneumonia. The witness later received information about deterioration of the deceased's health and went to check on him along with her other relatives. That was when she learnt of the death.
18. I have perused the evidence proffered and the Parties' submissions in relation to the charge facing the Accused. The sole issue for determination is whether the prosecution has proved beyond reasonable doubt that the accused murdered the deceased, actuated by malice aforethought.
19. There is no direct evidence linking the accused to the killing as none of the witnesses testified to seeing the accused commit the offence. Determination of the case therefore wholly depends on circumstantial evidence. In **Mwangi vs Republic (Criminal Appeal No. E054 of 2023) [2024] KEHC 3113 (KLR) 15 March 2023** (Judgment) this court explained that for circumstantial

evidence to be reliable it must be inconsistent with the accused person's innocence.

20. In the case of **Ahamad Abolfathi & Another vs Republic (2018) eKLR** also cited by the Prosecution and Defence Counsel, it was elaborated that;

“Circumstantial evidence is evidence which enables a court to deduce a particular fact from circumstances or facts that have been proved. Such evidence can form a strong basis for proving the guilt of an accused person just as direct evidence.”

21. In a much older case (**Republic vs Taylor, Weaver & Donoram (1928) Cr. Application R 21**), it was observed that;

“Circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by intensified examination is capable of proving a proposition with the accuracy of mathematics. It is no derogation from evidence to say that is circumstantial.”

20. In the often quoted case of **Sawe vs Republic (2003)** **KLR 364**, it was stated that circumstantial evidence must satisfy three tests, namely;-

“the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.”

21. As in the case of **R vs Kipkering Arap Koskei (1949)** **EACA 135**, the prosecution must also show that there existed in-culpatory facts that were incompatible with the innocence of the accused and incapable of any explanation upon any other reasonable hypothesis other than that of guilt.

22. **Section 206 of the Penal Code** provides that malice aforethought is proven by one or more of the following circumstances;-

- a. **Intention to cause death or do grievous harm whether the death actually occurs or not.**
 - b. **Knowledge that the act or omission causing death will probably cause the death or grievous harm to a person, whether the death is actually caused or not.**
 - c. **An intention to commit a felony.**
 - d. **An intention by an act or omission to facilitate flight or escape from custody of any person who attempts to commit a felony.**
23. The prosecution does not have to prove the motive for commission of any crime, and neither is the evidence of motive sufficient by itself to prove commission of a crime by a person who possesses the motive {(see **Case law in Robert Onchiri Ogeto vs Republic (2004) KLR (1a)**}.
24. Whereas PW5 claimed that the deceased complained of the Accused threatening to kill him, PW6 contradicts this evidence saying that the deceased loved the Accused. PW7 also told the court he never heard of the

Accused threatening the deceased. Any threats to kill were never reported to the police.

25. It is also noteworthy that PW1, PW2 and PW4 told the Court that there were no serious disputes in the family including over property. It therefore appears that the Accused had no motive to kill the deceased.
26. The prosecution evidence is further weakened by the fact that the Investigating Officer did not subject samples taken from the deceased's body to DNA sampling. The result could have implicated or exonerated the Accused.
27. In the premises, there is insufficient evidence to convict the Accused and the prosecution evidence is based on mere suspicion. He is acquitted of the charge under **Section 215 of the Criminal Procedure Code** and set at liberty unless otherwise lawfully held.

J. M. NANG'EA, JUDGE.

Judgement delivered virtually this 12th day of February, 2026.

In the presence of:

The Prosecution Counsel, Mr Wakasyaka.

The Defence Counsel, Ms Chepng'etich .

Accused, present.

The Court Assistant, Jeniffer.

J. M. NANG'EA, JUDGE.

ORIGINAL