



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL CASE NUMBER 4 OF 2018

REPUBLIC.....
STATE

VERSUS

SIMON NJOROGE KARIUKI
ACCUSED

JUDGEMENT

1. The Accused was on 29th August 2018 arraigned in court on information of **murder contrary to section 2023 as read with section 204 of the Penal Code.** The particulars of the offence state that on 24th November 2017 at Nyathuna area, Nakuru North Sub-County, within Nakuru County he murdered Rachael Wanjiru Mwangi.

Prosecution Evidence.

2. Part of the prosecution evidence was recorded before two other Judges (Justices Joel Ngugi and H.M Nyaga) who have since transferred to other work stations. This court took over the case on 3rd October 2024 and directed that hearing would continue from the point the previous courts left off.
3. PW1 was a minor girl aged 10. After *voire dire* examination conducted by the court, she gave sworn evidence telling the court that she was a primary school student. She knew both the Accused and the deceased as their neighbours. The Accused she named as Simon Njoroge had allegedly sold a farm to her parents. The witness further testified that on 4/11/2017 at around 5:00 p.m. the deceased went to their home to pick her grandchild called Shiru. She escorted them to their home, about 200 Metres away. Then the Accused arrived riding a motorcycle. He abandoned the motorcycle on the road and started beating up the deceased using a stick on the shoulders. The beatings caused the deceased to fall down. PW1 screamed for help, attracting the attention of her mother (PW7) who

appeared and pleaded with the Accused to spare the deceased. The Accused instead removed a panga that was wrapped in a bladder at the back of his motorcycle and cut the deceased across the face with it. The deceased bled as the Accused left on his motorcycle. According to PW1, police officers soon arrived in a car and drove the deceased away.

4. PW7 also testified confirming PW1's evidence. She stated that the Accused and the deceased were their neighbours. On 24/11/2017 at around 9:00 p.m. the deceased's young granddaughter called Shiru came to their house. Then the deceased also visited later at around 2:00 p.m. and brought a sweater for her granddaughter. As they chatted, the deceased is said to have inquired from PW7 if the Accused had been at the witness' home. The deceased expressed fear lamenting that the Accused had been threatening her.
5. The deceased left afterwards and returned to PW7's home at around 5:00 p.m. and took her granddaughter escorted by PW1. Shortly afterwards, PW7 heard PW1

screaming and pleading with her to go to the rescue of the deceased. She rushed to where they were and found the Accused armed with a panga and standing on the deceased who was down. PW7 also screamed for help. She witnessed the Accused cutting the deceased on the head using the panga. Another neighbour called Mercy Njenga also responded to the screams but the Accused allegedly pushed her away. The accused then walked to his motorcycle that was nearby and rode away. An attempt to administer first aid on the deceased failed and she succumbed to her injuries at the scene. Police officers arrived and took away the body.

6. PW3 is the deceased's son. He told the court that on the material date he was away at a place called Maili Sita when he received information about an incident at their home. He rushed home to find his mother lying on the ground dead. According to him the Accused had frequent quarrels with the deceased and that they had suspected him of demolishing their house.

7. PW4 stated that he was among a crowd that gathered at the scene after learning about the incident. The deceased was a worker on his land. His family and the accused were feuding over the land and the dispute was in court.

8. PW2 and 5 testified to identifying the deceased's body for post-mortem examination on 30/11/2017. The Pathologist who conducted the autopsy at the Nakuru County Teaching and Referral Hospital (PW6) noted that the body showed signs of oxygen and blood loss. There were linear bruises on the neck towards the back and the upper lip. A slash wound was observed on the parietal region of the head. Brain membrane was visible suggesting breaking of the skull. A linear skull fracture was visible below the slash wound. The fracture is said to have caused brain contusion and intracranial pressure. The doctor formed the opinion that the cause of death was "severe head injury with blood loss, attended by skull laceration + epidural hematoma due to

a single sharp force trauma (Machete) to the head, consistent with homicide.”

9. PW8 (Investigating Officer) stated that his boss, the Director of Criminal Investigations Nakuru North Sub County, informed him of the murder incident. He and other officers went to the scene and saw the deceased's body which bore wounds on the head and other body parts. Enraged members of the public were reported to have burnt down the suspect's home. Eye witnesses recorded statements naming the suspect as Babu or Guka Njoroge who fled after committing the act. The officers removed the body to the mortuary before searching for the suspect.
10. PW8 further testified that information was later received that the suspect had been sighted in Nairobi. Officers travelled to Nairobi to arrest him but failed to locate him. On 26/1/2018 members of the public reportedly arrested the suspect in Nairobi and handed him to Kamukunji Police Station. On the same date officers from Nakuru went to pick him up and charged him with

this offence after completion of investigations. According to PW8, the said eye witnesses feared to go to the police station to identify the arrested suspect but they testified in court. The murder weapon was not recovered. Investigations showed that the attack was motivated by a land dispute.

The Defence Evidence.

11. The Accused was put on his defence at the close of the prosecution evidence. Giving sworn evidence, he told the court that he used to live in Nakuru while working with the Kenya Revenue Authority (KRA). He did not know the deceased's name but had seen her before.
12. The Accused further told the court that on 24/11/2027 he was in Nairobi selling second hand shoes for a living after quitting employment with KRA. He therefore contends that he could not have been the one who killed the deceased on the same date in Nakuru. The Accused complains that he was falsely accused, telling the court that his name is not Babu or Guka Njoroge who was purportedly named as the suspect.

13. The Accused also denied existence of a land dispute between him and the deceased saying that she did not have any land. The court was told that the deceased lived on the land of PW4 to whom he had sold the land. The Accused also confirmed selling land to PW7 among others.
14. The Accused therefore reiterates his denial of the charge.
15. The Prosecution and Defence Counsel filed written submissions which I have perused against the rival evidence and the charge. In homicide cases, death is presumed to have been unlawfully caused unless it is otherwise accidentally caused in circumstances that make it excusable (see **Uganda vs Lydia Draru Alias Atim HCT-00-CR-SC-0404 High Court of the Republic of Uganda and Akol Patrick & Others vs Uganda (2006) HCB (Vol. 1) 06.**) The Court of Appeal for East Africa in **R V. Gusambiza s/o Wesonga 1948 15 EACA 65** has also underscored the legal position.

16. In **Republic vs Gideon Wambua Kioko & 2 Others** (2019) eKLR in which three essential elements of the offence of murder were listed as hereunder;

- (i) The fact of death and cause of death of the deceased.
- (ii) That the accused caused the death through an unlawful act or omission.

Issue for Determination.

17. The sole issue for determination is whether the prosecution has proved beyond reasonable doubt that the accused murdered the deceased, actuated by malice aforethought.

18. **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.**

19. 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)**).
20. In **Charles Kasena Chogo vs Republic {2019} eKLR and R V**, it was observed that the burden is on the prosecution to prove falsity of an *alibi* defence.
21. In **Republic vs Mahoney (1979) 50 CCC** it was held that failure to disclose an *alibi* defence at a sufficiently early opportunity may determine the weight to be given to it. It is underscored that early disclosure enables the police to investigate the veracity of the defence and avoid prejudice that may otherwise be occasioned to the prosecution.

Determination.

22. The evidence of PW1 and PW7 to the effect that they say saw the accused attacking the deceased with a panga has not been discredited either by cross-examination or in the defence evidence. They know the Accused well as their neighbour who had even sold land to them, a fact the accused confirmed.
23. The Accused's *alibi* defence is not credible. It appears to be an afterthought as questions suggesting such defence were never put to prosecution witnesses during their cross-examination. Besides, the law required the accused to give early notice of such defence to the prosecution to enable them investigate the veracity and decide whether or not to continue with the prosecution. The *alibi* defence does not therefore displace the prosecution evidence. By cutting the deceased on the head with a panga, the Accused intended to kill her. It is noteworthy that post-mortem examination of the body showed the cause of death as a single sharp force trauma. It is apparent that the killing was motivated by

a land dispute between the accused and PW4. The deceased was the latter's worker who was staying on the disputed land in respect of which there was court litigation, according to PW4.

24. The Prosecution therefore proved the charge against the accused beyond reasonable doubt. He is convicted as charged under **Section 215 of the Criminal Procedure Code.**

J. M. NANG'EA, JUDGE.

Judgement delivered in open court this 17th day of February, 2026.

In the presence of:

Mr. Wakasyaka for the DPP

Ms Ngugi Advocate for the Accused

Accused, present

Court Assistant (Jeniffer)

J. M. NANG'EA, JUDGE.