



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 23 OF 2019

REPUBLIC/STATE
PROSECUTOR

VERSUS

SCHOLASTICA KAWERA NZENGE
.....ACCUSED

JUDGMENT

1. The accused person is charged with the 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 11th July 2019 at Syokimau area in Mlolongo Township Athi River Sub-County within Machakos County, the accused person murdered **James Kinyua Mutegi.**
3. The accused person pleaded not guilty to the charge whereupon the prosecution called ten (10) witnesses in an effort to prove its case.

4. The sum total of the evidence of the ten prosecution witnesses is that on the material day the deceased went to the hotel where the accused was working demanding for Kshs.50 which he had given to the accused. An altercation ensued between them and they started fighting. The deceased kept pricking the accused with his finger on her forehead and this saw the accused threaten to stab him with a knife. The accused then stabbed the deceased on his stomach. The deceased was rushed to Shalom hospital where he passed on that night.
5. According to PW2, he was called by a colleague informing him that the deceased had been stabbed and he rushed to the scene and found the deceased groaning in pain with his intestines out. He inquired from him what had happened and he claimed that the accused had stabbed him. He ordered the accused to board his vehicle and also to hand over the knife that she used to stab him. He handed over the knife to the Police officer from Mlolongo police station.
6. PW5 testified that she was called by the OCS and informed of an incident that occurred at Mastermind Tobacco limited and sent to go see what transpired. On arriving at the scene she found that the deceased had been rushed to hospital, she proceeded to Shalom hospital where she found the accused had been admitted and had an open wound on the stomach. She interrogated him

and he stated that he had gone to the hotel to eat and asked the accused about the Kshs 50 which he had bought her airtime on the previous day. They then started quarreled and the accused took a knife and stabbed him on the stomach.

7. According to PW5 the accused was arrested by the security officers from Mastermind who also gave her the knife with blood which they took from the scene. The deceased died while being treated.
8. Upon conclusion of investigations, the accused person was charged with this offence. As part of its evidence the prosecution produced a post mortem report to the effect that the deceased died and that death was as a result of excessive blood loss due to penetrating sharp object trauma to the abdomen.
9. After the close of the prosecution's case this court found there was evidence that the accused person killed the deceased and put her on her defence as required by **Section 306 (2) of the Criminal Procedure Code**. The accused then elected to give sworn evidence. She was the sole witness.
10. It was her testimony that on the material day, the deceased who was her boyfriend gave her a gift of Kshs.50/- and she was surprised when he later went and demanded it back ostensibly because all she did was to talk to other men. She stated that the deceased was angry but she was not and as she had done

nothing to annoy him she demanded to know why he was talking to her like that. That angered him even more and he threatened to stab her with a knife that was on a table where she was washing dishes. He then gave her several blows and when she ran away he pursued her knife in hand. She stumbled and fell and that is when he caught up with her and also fell. A struggle ensued but because he was bigger than her, she tried to defend herself so he would not stab her. She stated that it was as they were struggling that he stabbed himself with the knife. She only realized he had done it when she saw him bleeding from the belly. She denied that she stabbed him and stated that she in fact accompanied him to hospital.

11. Counsel did not make any arguments after the close of defence case.
12. The elements of the offence of murder are; the death of the deceased; that the death was by an unlawful act; that the unlawful act was of the deceased and that there was malice aforethought. All the above elements must be proved beyond reasonable doubt by the prosecution.
13. In this case, I have carefully evaluated the evidence adduced by both sides and as stated earlier, the death of the deceased is not in doubt as the same was confirmed by eye witnesses as well as medical evidence (post mortem).

14. That the death was by a human hand and by an unlawful act was also in my considered view proved beyond reasonable doubt. The post mortem indicated that the cause of death was a penetrating stab wound in the abdomen. According to the accused person the deceased inflicted the stab wound on himself as they were struggling. He was angered because she would not give him Kshs. 50/- which he had given her as a gift. I am not however convinced that the injury was self-inflicted. PW1 testified that the accused was her employee and that she was present when the deceased got into an altercation with the accused because of the Kshs.50/- she confirmed the accused's testimony that the deceased roughed up the accused before both ran out of the hotel only for her to hear the deceased cry out that the accused had stabbed him. In cross - examination she testified that she heard with her own ears, threaten to stab the deceased if he persisted in attacking her. That the deceased claimed to have been stabbed by the accused was confirmed by PW2 and PW4. These are witnesses to who the deceased can be said to have made a dying declaration since he died a few days thereafter. I am also satisfied that they were credible witnesses and that their evidence is trustworthy and reliable as there is nothing on record to suggest they had reason to lie against her. I am therefore satisfied beyond reasonable doubt that the accused killed the deceased. I further find that whereas the

deceased may have been defending herself, she used excessive force and hence the action of stabbing the deceased was unlawful.

15. What about malice aforethought, Section 206 of the Penal Code provides 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.”

16. The evidence in this case reveals that the accused would not have stabbed the deceased had he not attacked her and continued to do so even after she ran away. The medical report also indicates that there was a single stab wound meaning that there was no intention to kill the deceased or even to occasion

him grievous harm. It is also clear that the accused had knowledge that the single stab wound could lead to the death of the deceased. It is my finding therefore that malice aforethought was not proved beyond reasonable doubt. But as the accused killed the deceased, I would reduce the offence charged to the lesser offence of Manslaughter contrary to **Section 202(1) as read with Section 205 of the Penal Code** as I am entitled to under **Section 179 of the Criminal Procedure Code.**

17. Accordingly, I find the accused guilty of the offence of Manslaughter contrary to **Section 202(1) of the Penal Code as read with Section 205 of the Penal Code** and convict her accordingly.

Judgment signed, dated and delivered virtually on this 19th day of March, 2026.

E. N. Maina
Judge

In the presence of:

Ms Kavita for the accused person

Mr. Motende for the state

Accused person

Mary - Court Assistant/Interpreter

ORIGINAL