

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
CORAM: R. MWONGO, J.
CRIMINAL CASE NO. E009 OF 2023

REPUBLICPROSECUTION

-VERSUS-

LEATUS MURIUNGI NJAGI.....
ACCUSED

J U D G M E N T

The Charge

1. The accused was charged with the offence of murder contrary to section 203 as read with Section 204 of the Penal Code. The Particulars of the offences are that on 24th March 2023, at Mwana wa Giti area in Gatondo village, Itabua location in Embu West subcounty within Embu County, the accused murdered Matilda Kathambi Karimi.
2. Upon arraignment, they pleaded 'not guilty' and a plea of not guilty was duly entered. The matter proceeded to full hearing.

Summary of the Evidence

3. PW1 was Hilgard Gatiku Njagi who stated that on the day of the incident, she had taken a shower and left her dirty clothes in a basin outside the house. She asked the accused to fetch water for her but he refused. Soon thereafter, from her window, she saw the accused stabbing the deceased with a knife. Fearing for her life, she ran to the shamba and hid. She was found there by the accused and ran off but was not able to jump over the fence to escape him. However, he did not attack her. In cross-examination, she stated that she recorded a statement at the police station but it was not read back to her. She stated that she witnessed the incident from inside her house which had 2 doors, and that the incident happened outside the house. She denied that the deceased had attempted suicide previously, but that she had been taken to hospital after taking an overdose of medicine.
4. PW2 was Rose Michel Mueni, a daughter of the deceased. She stated that she was washing clothes outside the house when the accused asked her why she had refused to wash clothes for PW1. She said that she did not wash the clothes because the soap had been used up. The accused told her that PW1 would curse

her for refusing to wash her clothes for her. She got offended and went to the house to tell her mother and PW1 what the accused had said. Her mother went outside and asked the accused if his children would wash clothes for her children since he was requiring her children to wash clothes for his children.

5. PW2 said the accused and her mother started quarrelling and she left them and went to buy soap. She stated that she returned 10 minutes later to find the deceased lying in a pool of blood outside the house. On cross-examination, she stated that she did not witness what transpired between the accused and the deceased. That her mother spoke to the accused through the window before she went outside to confront him. That the deceased did not provoke the accused but she simply posed a question to him.
6. PW3 was Modesta Karimi, the mother of both the accused and the deceased. She testified that on the day of the incident, she was at home with PW1, her mother and her children. At around 9:30am, the accused went to the house and asked for tea. He served himself and left the house. Shortly afterwards, the deceased entered the house and said that the accused had reprimanded her for refusing to wash PW1's clothes. PW2 told her that there was no soap and she gave her money to go and buy soap. She stated that she went outside and confronted the accused for reprimanding her daughter.
7. She (PW3) asked the accused that now that her children are being asked to wash clothes for his children, when would his children do the same for hers? After that, the accused rushed to the house and locked the door from inside. She then heard commotion and she ran to call for help. When she returned, she found the deceased lying outside the house in a pool of blood. A crowd had gathered outside, and by that time, the accused had taken off and went to the police station. She observed that the deceased had 3 stab wounds sustained by a kitchen knife which had a blue handle.
8. In cross-examination, she stated that the accused stabbed the deceased while they were inside the house and also outside the house. That PW1, her mother, peeped through the window and saw the accused attacking the deceased. That she had warned the deceased not to exchange words with the accused before the altercation. She stated that she found the deceased lying in a pool of blood, but denied that the deceased was the aggressor. She said that she loved her children equally and she had tried to stop the accused from forcing the deceased to wash PW1's clothes. On the allegation that the deceased had taken an overdose of medication, she stated that the deceased had a skin condition for which she was taking medication but she never abused this medication.

9. PW4 was Catherine Kaari Njeru, a cousin of both the accused and the deceased. She stated that she identified the body of the deceased at Embu Level 5 Hospital Mortuary for purposes of a post-mortem.
10. PW5 was George Kiriungi wa Thuo, a bodaboda rider. He stated that on the day of the incident, he was working on his farm when the accused came to him with blood-stained clothes. He was looking frightened and asked him to rush him to the police station as he had been involved in some fracas. He stopped working on the farm and took the accused to Itabua Police Station and then he returned home. Later that day, he received a phone call from the DCI inviting him to return to the police station to record his statement. In cross-examination, he stated that the accused did not tell him what the fracas he was involved in was about.
11. PW6 was CI Sarah Bokosh who stated that she visited the scene where she found the deceased lying at the entrance of the house. Inside the house, she noted signs of a struggle as tables were turned upside down and there was blood on the walls and floor. The deceased had several cuts on the side and back of her neck. Around the compound, they found a kitchen knife with a blue handle about 100-150 meters from the house inside a water drum which was open at the top. She took photographs of the scene, and she produced them as evidence together with a certificate of photographic evidence. In cross-examination, she stated that when she arrived at the scene, she found the door closed although she was not the first responder at the scene.
12. PW7 was Dr. Wangari Kamau who testified on behalf of Dr. Njiru who did the autopsy. She stated that the body of the deceased was identified by PW4 for purposes of postmortem. She produced the postmortem report as evidence. She observed that the deceased had stab wounds on her neck, chest and forehead. She had a penetrating stab wound on the chest with massive bilateral hemothorax and swelling on her pericardium. There were several severed major blood vessels causing massive external bleeding. She formed the opinion that the cause of death was cardiopulmonary arrest as a result of massive external bleeding from severed vessels with massive bilateral hemothorax from chest stab wounds.
13. PW8 was Dr. Sheila Shavulimo who conducted a mental examination on the accused. Following the examination, she stated in her report that she found the accused mentally fit to plead. She produced her report as evidence.
14. PW9 was CI Jeremiah Ongaga of DCI Headquarters Eastern. He stated that he received a phone call from his counterparts at DCI Embu West, requesting his assistance to record a confession. He proceeded to Itabua Police Station where

the accused had been detained. The confession was recorded on 30th March 2023 at 10am at DCI offices in Mugoya. He took the accused through the prerequisite requirements before recording a confession and he informed him of his rights. One of these rights was the right to have a third party of his choice to be present during the confession. The accused opted to have his uncle, Francis Peter Gitonga, present during recording of the confession.

15. He informed the accused the nature of the charge he was facing and ascertained that he understood. The accused stated that he was comfortable to have the confession proceedings conducted in the English language. He confirmed that the accused had not been subjected to torture, any form of degrading treatment, intimidation or threat while in police custody. He informed the accused that he was free to take breaks for food, drinks or smoking if he so desired at any time during the recording of the confession. He ascertained that the accused did not have any medical condition and that he had an opportunity to talk to his relatives after arrest. The accused signed the charge and caution statement.

16. PW9 stated that after all this information, the accused agreed to record his statement. In the confession, the accused stated that he had taken his 2 children to school and then he returned home at around 7:30am and went to his mother's house to have breakfast. The accused had formed the habit of helping his mother with work around the compound and farm because his children live with his mother. He served himself tea that morning and then went to sit outside, leaving his mother and sister (the deceased) inside the house. He then fetched water for his mother to wash her clothes and noticed she wanted to do the laundry by herself. He offered to help her and took the clothes to the laundry area where he met his niece, the deceased's daughter. He requested his niece to wash those clothes and while he was still instructing the niece, the deceased rushed from the house.

17. The deceased asked the accused 'your children have never washed my daughter's clothes' and said that her daughter was not a maid. An altercation ensued between them, and her sister reminded him of something that had happened the previous week which portrayed him as a coward. The previous week, thugs had attacked them at night and instead of defending them, the accused had run to his mother's house while screaming. The accused person stated that this angered him and he decided to pack his children's clothes and leave his mother's house.

18. He said he went inside the house and while he was packing the clothes, the deceased accosted him with a knife in hand. They tackled each other and, in the

process, he took the knife from her and cut her on the forehead. As she was falling down, the knife cut her on her neck. He used the same knife to stab her severally on the chest. He then left through the back door, threw the knife into a drum and ran to the shamba. He met a neighbor and asked him to take him to the police station and he did. He arrived at the police station and found the officers talking about an incident of killing in his village and they were preparing to go to the scene.

19. He reported himself to the OCS and he was arrested and transferred to Embu DCI offices where he was processed and arraigned. The accused person identified the murder weapon to the police. The confession recording took 1 hour 43 minutes. He signed and certified the confession. This confessional statement was produced as evidence.
20. On cross-examination, the witness stated that the cautionary questions that the accused was asked before recording of the confession were answered but he did not sign against the answers he gave according to the typed statements. He stated he signed the original confession but he did not sign the typed one. That he handed over the original statement to the investigating officer. He stated that the original signed proforma and confession are the ones produced as evidence.
21. PW10 was Margaret Wahu Maina of the Government Chemist. She stated that she analyzed samples secured at the crime scene, from the body of the deceased and the accused's clothes. From her analysis, she concluded that the blood found on the accused's clothes and on the knife matched the deceased's DNA profile. She produced the analysis report as evidence. In cross-examination, she stated that after analysis, the items analysed are usually not returned to the investigating officer because they are biological hazards.
22. PW11 was Francis Peter Gitonga who stated that the deceased and accused are his niece and nephew. That on 30th March 2023, he was called to go to the DCI office to witness the statement made by the accused. He met PW9 and the accused was escorted by another officer who left afterwards. He said that the accused appeared to be well as PW9 asked him some questions. He heard everything that the accused said about what transpired on the day of the incident, and then he signed a handwritten proforma. He stated that the accused did not ask any questions during the session. In cross examination, he stated that it was PW9 who called him to invite him for the confession recording.
23. PW12 was PC Catherine Ngunju. She stated that when she arrived at the scene, the deceased was lying at the entrance of the house in a pool of blood. Upon inquiries, she learned that the deceased had quarreled with the accused before

they entered the house where a commotion ensued. She was informed that PW3 and PW1 heard the commotion and witnessed the incident. PW3 raised an alarm and by the time people gathered, the accused had already stabbed the deceased with a kitchen knife. PW6 processed the crime scene and took photographs which were produced as evidence.

24. The body of the deceased was removed to Embu Level 5 Hospital mortuary where postmortem was conducted and the report thereof produced as evidence. The suspected murder weapon - a kitchen knife with a blue handle - was recovered in a water drum in the accused's farm. PW12 was informed that the accused had surrendered himself at Itabua Police Station in his blood-stained clothes and they were confiscated for DNA sample analysis. The accused was arraigned for custodial orders and he was held at Itabua Police Station pending investigations. The DNA analysis from samples collected from the body of the deceased, the accused's clothes and the suspected murder weapon were presented in a report from the government chemist analyst as evidence. The accused was then charged with murder.
25. In cross-examination, he stated that it was the accused who led the police to the place where the knife was on his farm even though in his statement it did not indicate that the farm was his. There is no record that samples were taken from the body of the deceased. At the postmortem, she saw the piercings on the deceased's body. She stated that she was present during recording of the confession and that this is in her statement.
26. The prosecution closed its case and the court found that it had made a case for the accused person to answer. Consequently, the accused was placed on his defense.
27. Testifying as DW1, the accused gave sworn evidence stating that on the fateful day, he took his children then passed by Muthatari to buy maize seed that morning before returning home. He used to live under the same roof as his mother because his house was under renovation. When he got back, he joined his mother and sister the (deceased) for a cup of tea. He informed his mother that he had planned to spray cattle that day. As he was inside the house, he heard PW1, his maternal grandmother crying and when he went to check, PW1 asked him to fetch water for her so that she could wash her clothes.
28. PW1 told him that she was crying because she had had an argument with the accused's mother and while he was still talking to her, the deceased's daughter walked into the compound. The accused asked her to wash PW1's clothes so that she stops crying. Soon, his mother came out of the house and asked what he had

told the deceased's daughter. The deceased also came out of the house and warned him against engaging her daughter as she was not his prostitute. The deceased then picked a basin full of water and splashed it on him and hit him with a plastic jar. His mother urged them to stop fighting and he left and went into the house.

29. The deceased followed him into the house while armed with a knife and she was bleeding from her chest. He stated that the deceased started attacking him with the knife but he blocked it but she cut his hand. He fell down and the deceased stabbed his left thigh. He managed to escape and, in the process, pushed tables out of the way. He ran outside towards PW5 and asked for a bandage but he had none. He asked PW5 to take him to the police station to report the matter and he did. He was detained at Itabua Police Station where a statement was brought for him to sign. He denied writing any statements including the confession which was presented to him and he was harassed and beaten by police officers who made him sign it. He denied calling PW11, his uncle and said he did not make any arrangements for him to attend the matter.
30. He said that he asked the police to take him to hospital but they refused until when he was charged. He did not state in his statement that he had been mistreated by the police during custody. On cross-examination, he stated that the deceased also lived in their mother's house with her 2 children. He stated that he did not know how the deceased got injuries in her chest. That it was the first time that the deceased insulted her. He denied committing the offence and stated that he had nothing to do with her death.

Parties' Submissions

31. The accused stated that he would rely on the evidence on record. The prosecution filed written submissions.
32. The Prosecution relied on section 203 of the Penal Code and the cases of **Anthony Ndegwa Ngari v Republic [2014] KECA 424 (KLR)** and **Republic v Stephen Sila Wambua [2017] KEHC 1165 (KLR)** and submitted that it had proved all the elements of the case beyond reasonable doubt. That the testimonies of PW1, PW2 and PW3 prove that the accused person killed the deceased on that fateful day. It also submitted that the murder was premeditated and it relied on section 206 of the Penal Code. Reference was made to the testimonies of PW6 and PW12.

Issue for Determination

33. The issue for determination is whether the prosecution has proved its case against the accused persons beyond reasonable doubt.

Analysis and Determination

34. Article 26 of the Constitution of Kenya provides that a person shall not be deprived of life intentionally, except to the extent authorized by the Constitution or written law. The accused person herein faces the charge of murder contrary to section 203 as read together with 204 of the Penal Code. It was the duty of the prosecution to prove beyond reasonable doubt, that the accused person murdered the deceased. These provisions of the Penal Code state as follows:

“203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.

204. Any person who is convicted of murder shall be sentenced to death.”

35. The elements of murder were discussed in by the Court of Appeal in the case of **Anthony Ndegwa Ngari v Republic (supra)**, as follows:

“For the offence of murder to be proved, there are three elements which the prosecution must prove beyond reasonable doubt in order to secure a conviction. They are: (a) the death of the deceased and the cause of that death; (b) that the accused committed the unlawful act which caused the death of the deceased and (c) that the Accused had the malice aforethought.”

36. On the first element of death and cause of death, PW6 produced a postmortem report and observed that the cause of death was cardiopulmonary arrest as a result of massive external bleeding from severed vessels with massive bilateral hemothorax from chest stab wounds. The death and cause are not in dispute herein.

37. The second element involves establishing, from the available evidence, whether it is the accused persons who committed the unlawful act which caused the death of the deceased. The standard of proof in criminal cases is high: beyond reasonable doubt. Lord Denning in **Miller v Ministry of Pensions, [1947] 2 ALL ER 372** stated:

“That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to

deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course it is possible, but not in the least probable, the case is proved beyond reasonable doubt, but nothing short of that will suffice.”

38. PW2, the deceased's daughter, stated that she was instructed by the accused to wash PW1's clothes. She did not find his words to be kind enough and so she went to the house to report the matter to her mother and PW3, her grandmother. The deceased gave money to PW2 to go and buy soap. The deceased then went outside and confronted the accused for telling PW2 to wash PW1's clothes. The words used by the deceased towards the accused were not kind either, according to PW2 and PW3.
39. An altercation then ensued between the accused and the deceased and the accused rushed to the house and locked the door behind him. PW1 stated that she heard commotion from inside the house and she saw the accused stabbing the deceased while both inside the house and also while outside. The house is the same one where the deceased and PW3 were sitting after the accused served himself tea and went outside. PW3 stated that she tried to stop the altercation between the accused and the deceased to no avail and so she ran off to call for help.
40. Unfortunately, by the time she returned and a crowd had gathered outside and the deceased was lying dead in a pool of blood at the doorway of the house. PW2 testified that when her mother gave her money to go and buy soap, she had left the accused and the deceased quarrelling outside the house. When she returned, she found the deceased, her mother, lying dead in a pool of blood.
41. In addition to the eyewitnesses' evidence in this case, there is also a confessionary statement produced as evidence. At first, a typed and unsigned copy was produced but the court ordered, through its ruling delivered on 28th August 2024, that the original signed confession be produced as evidence and the prosecution complied. In his defense, the accused denied recording that confession and argued that he had been harassed by the police officers and forced to sign.
42. This statement notwithstanding, the prosecution went the full length to ascertain that the confession was recorded procedurally and the confessionary statement was admitted as evidence. In its ruling, the court, while determining the objection to production of the confessionary statement, the Judge ordered that any other issues arising from the confession could be canvassed in a trial-within-a-trial if it becomes

necessary. This order left the option for a trial-within-a-trial open and available for the accused person because of the possibility that the accused person might retract the confessionary statement or that he would challenge its veracity.

43. In this case, there was no trial-within-a-trial despite issues regarding the procedure for recording of the confessionary statement and existence of the statement itself. PW9 testified that he followed the confession procedure laid down in the Evidence (Out of Court Confessions) Rules. He was also qualified to record the confession and after such recording, he signed the relevant accompanying certificate. On perusal of the confessionary statement itself, the court considers the same to be lawful and in accordance with section 26 of the Evidence Act.
44. Even as the accused sought to challenge the confessionary statement in his defense, this line of argument cannot stand because neither the prosecution nor the defense took the opportunity to try the matter through a trial-within-a trial. Therefore, the confessionary statement must be treated as good evidence which has been corroborated by the evidence of PW1, PW2 and PW3, all of who place the accused person at the scene.
45. PW1 stated that she witnessed the incident from inside and outside the house. This is believable because PW3 stated that the accused rushed to the house and locked the door before she heard a commotion. She ran to find help but when she returned, she found the deceased dead. From the evidence, it is the same house where he used to live with his mother and the same place where the deceased was attacked.
46. PW2 and PW3 did not witness the accused person stabbing or killing the deceased, but they witnessed the altercation between the accused and the deceased immediately before they found her dead. This is circumstantial evidence placing the accused person at the scene in an altercation immediately before the killing. Moreover, the confessionary statement by the accused also places him at the scene where the deceased was killed. PW10 and PW12 stated that the accused presented himself at the police station after the incident and reported the incident before he was arrested. All this evidence, considered in its totality, proves beyond reasonable doubt that the accused indeed killed the deceased.
47. The next issue is to establish whether from the evidence, the accused bore malice aforethought. In the case of **Republic v Stephen Sila Wambua Matheka [2017] KEHC 5769 (KLR)** it was held;

“The courts in interpreting the provisions of section 206 have stated as such in various authorities. In the classic case of Republic v Tubere S/O Ochen [1945] 12 EACA 63 the court held that an inference

of malice aforethought can be established by considering the nature of the weapon used, the part of the body targeted, the manner in which the weapon was used and the conduct of the accused before, during and after the attack. In the Ogelo v Republic [2004] 2KLR 14 the appellant in this case chased the deceased and another. He caught up with the deceased and stabbed him with a knife on the chest. The deceased died of the stab wounds. The court held inter alia that by dint of section 206 (1) an intention to cause death or grievous harm malice aforethought is deemed to have been established by evidence presented by the prosecution. Malice aforethought can also be inferred from the manner of killing. See the case of Ernest Bwire Abanga Onyango v Republic [1990] Cr. Appeal No. 32 of 1990. The principle here as enunciated under section 206 and the authorities is the fact of establishing by evidence that the accused conceived the criminal mind before converting that in the mind into acts of omission to commit the murder.”

48. From the evidence before the court, there is no doubt that the accused and the deceased had an altercation, and as soon as the accused went inside the house, he locked the door from inside. A commotion was then heard inside the house. In his confessionary statement, the accused stated that he went against his better judgment and stabbed the deceased with a knife on the chest. He also stated that the deceased provoked him by insulting him and he was angered. These facts speak to there being malice aforethought on the part of the accused.

Disposition

49. Ultimately, I find that the prosecution has proved the case against the accused beyond reasonable doubt. Accordingly, I find the accused guilty of the offence of murder contrary to section 203 of the Penal Code, and hereby convict him accordingly.

50. It is ordered that mitigation shall follow on a date to be notified. To aid mitigation and sentencing, a Probation Officer’s Pre-sentence Report shall be filed within 14 days.

51. Orders accordingly.

Delivered, dated and signed at Embu High Court this 19th day of March, 2026.

**R. MWONGO
JUDGE**

Delivered in the presence of:

1. Accused present at Embu Main Prison
2. Munene for Accused.
3. Ms. Mwaniki for the state
4. Francis Munyao - Court Assistant