



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS COUNTY

COURT NAME: MACHAKOS HIGH COURT

CASE NUMBER: HC.CR.C/3/2019

THE REPUBLIC VS YVONNE MUTHEUMUTISYA

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. The particulars being that on the night of 24th January 2019 at Mjini village within Township location, Central Division, in Machakos County, she murdered Mohammed Ahmed alias 'Mbonge'.

2. The accused person pleaded not guilty to the charge and the prosecution set out to prove its case by calling six (6) witnesses.

3. Briefly, the prosecutions case was that on the material, Hadija Mwikali Mutuku (PW1), was in her house when at about 7pm she heard someone shouting her name. She got out of her house which was close to that of the deceased (her son), and the accused who was his wife, and saw the accused lying at the door. The accused was standing there with a knife in her hands. She was allegedly proclaiming that she had accomplished her mission. PW1 tried to lift the deceased up but stopped when she noticed his intestines were protruding. She rushed to call a doctor who instead told her to go to the hospital. She looked for someone to take the deceased to hospital and went to make a report to the police station. Police officers went to the scene and arrested the accused. They also recovered the knife. Later a postmortem was performed on the body of the deceased and it was established that the cause of death was severe internal hemorrhage secondary to penetrating injury. The accused was subsequently charged with this offence. The postmortem form and photographs of the scene were tendered in evidence. The knife was also produced.

4. When the court put the accused on her defence, she testified on oath and called one witness, her son. It was their evidence that on the material day the accused arrive home after the deceased and found him with their son. The house was dark as there was no bulb and so the deceased sent their son to buy one. The deceased and the accused were left alone in the house. The accused stated that the deceased disapproved of her working and so he demanded to know why she had disobeyed him. He then made to give her a blow and so she held her head in both hands as if to prevent it. The



deceased then knelt down and she thought that he wanted to beg her forgiveness as was their custom after quarreling. It was at that juncture that their son came back with the bulb. The accused stated that as she was about to fix the bulb the accused got up and staggered outside on his knees. He hit the door of the house opposite theirs with a lot of force. It was then that she fixed the bulb, picked up the knife from the floor and followed the accused outside. As she was asking him to go back inside so they could settle their differences his mother appeared and demanded to know why she had shoved him outside. Fauzia (PW2), also wanted to know what had transpired. The accused stated that she did not respond. She went back into the house. She was later arrested and subsequently charged with this offence. She vehemently denied that she stabbed the deceased.

5. Juma Mohamed, the son of the accused testified that the deceased was his father; that he was eight years old at the time of the occurrence. He echoed the accused's testimony and stated that it was he who alerted told the accused that his father had stabbed himself. He also produced a statement which he recorded under inquiry soon after the occurrence. In the said statement he had narrated how when he went back from the shop, he found the deceased pointing a knife to his stomach and then stab himself. He then staggered outside holding the knife. He stated that it was after he fell that the knife also fell and the accused picked it. People soon gathered at the scene and started saying it was the accused who had stabbed the deceased. Police arrived and arrested her. He stated that the deceased who was bleeding profusely was taken to hospital.

6. Learned Counsel for both sides made their final arguments through written submissions which I have carefully considered alongside the evidence.

Analysis and determination.

7. The prosecution is required to prove all the elements of murder – to wit death of the victim, that the death was by an unlawful act of the accused person and that the unlawful act was committed with malice aforethought, beyond any reasonable doubt.

8. The first element, death of the deceased was proved beyond reasonable doubt through the evidence of the deceased's mother and a postmortem report. The accused also admits the fact of death. The medical evidence was conclusive that the cause of death was severe internal hemorrhage secondary to penetrating abdominal injury. That evidence was not rebutted and hence the cause of death is not in issue.

9. What is in issue is whether the injury was self-inflicted or whether it was by an unlawful act of the accused person. There are two accounts regarding the circumstances that led to the death of the deceased. The first account that of the mother of the deceased (PW1) who stated that she saw the accused holding a knife and boasting that she had accomplished her mission. The second account is that of the accused and her son DW2 who both testified that the stab wound to the abdomen which culminated in the death of the deceased was self-inflicted.

10. This court has carefully evaluated the evidence adduced by both sides. I have also considered the rival submissions. I must confess that the testimony of DW2 has cast doubt in my mind as to whether the accused person committed this offence. Whereas DW2 was barely eight years old when this offence was committed there was a lot of clarity and consistency in his evidence regarding what he saw. A statement he recorded under inquiry very soon after the crime is alleged to have occurred and which he recorded while he was kept in a cell separate from his mother, was produced in evidence as exhibit D1. In that statement he contends that he in fact saw his father, the deceased stab himself. What he told the police six years ago concerning the occurrence, is the same thing he told this court. He was very consistent and steadfast and even when he was cross – examined he did not waver. It is instructive that the prosecution did not call him as a witness most likely because it would weaken their case against the accused person and indeed it has. Unlike PW1 and PW2 he was



in the room when the events took place. His was therefore a first-hand account. I also found his testimony more credible because unlike PW1 whose hostility towards the accused was obvious, DW1 told the court that the deceased was his father who he loved. He did not express any hostility against the deceased and neither did he impress this court as someone who was merely trying to cover up for the accused. The law requires that where, in a criminal case, any doubt arises as to the guilt of the accused person, the benefit of doubt must be credited to the accused person. This case is no different and therefore the benefit of the doubt created by the defence must go to the accused. I need not therefore consider the other elements of the offence.

11. Accordingly, I find the accused person not guilty of the offence of murder and acquit her under Section 306(2) of the Criminal Procedure Code. She shall be released forthwith unless otherwise lawfully held.

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

SIGNED BY/FOR:
HON. LADY JUSTICE E.N. MAINA



THE JUDICIARY OF KENYA.
MACHAKOS HIGH COURT
HIGH COURT DIV
DATE: 2026-03-22 14:23:06