

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
CRIMINAL CASE NO. 32 OF 2023

REPUBLIC.....

PROSECUTION

VERSUS

WILLIAM MASIKA TASIKA.....

ACCUSED

JUDGEMENT

1. The accused was charged with two counts of murder contrary to section 203 as read with section 204 of the Penal Code. It was alleged that on the night of 5 April 2018, at an unknown time, at Ole Dume Road off Diani Close in Thomson Estate, Muthangari Area within Nairobi County, he murdered Mercy Andeso and Hope Imali. He pleaded not guilty.
2. The prosecution called nine witnesses in support of its case.
3. PW2, Maureen Emali Muluba, testified that she operated a reflexology business within a gated compound along Ole Dume Road. On 5 April 2018 at about 2.00 pm, she reported to her office and encountered the accused, who was the caretaker. At about 5.00 pm, during heavy rainfall, she heard intermittent screams of a woman in distress. She checked from her office and later stepped into the corridor but did not immediately identify the source.
4. Shortly thereafter, she observed the accused emerging from the landlady's office area and noted bloody footprints as he descended the stairs. Upon inquiry, he stated that he had been attacked by individuals allegedly linked to a person named Mercy

and requested her to inform the landlady. He left the premises on a bicycle after she opened the gate.

5. PW2 contacted the landlady and, upon advice, sought assistance. Several individuals entered the premises and police later arrived. She observed the body of an adult female lying on the floor with visible stab wounds. She also noted items on a table, including two cups of tea. At about 10.00 pm, she saw the accused near the main gate attempting to flee before he was apprehended. She identified him and confirmed she had known him as caretaker for approximately one year without prior dispute.
6. PW3, Loise Nduta Chuchu, an IT consultant and co-director of the premises, testified that the accused was employed as caretaker and had access to the office. On the material day, she was at home when she received a call from PW2 informing her of an incident and that the accused had claimed to have been attacked.
7. PW3 attempted to contact the accused without success and instructed PW2 to seek assistance. She proceeded to the premises at about 6.00 pm and found a crowd gathered. Inside, she observed paramedics attending to a woman lying near the entrance, with extensive blood loss. She also saw a baby near the sink in the bathroom and a bathtub containing blood-stained water.
8. PW3 further observed a knife near the baby and a hammer in the bathroom. She stated that the items belonged to the office. The accused later contacted her requesting money for medical treatment. Acting on police advice, arrangements were made for him to return, upon which he attempted to flee but was apprehended. She identified him at the scene.

9. PW4, Mercy Gichoni Njeri Maina, corroborated PW3's account. She arrived at the premises between 6.30 pm and 7.00 pm and found paramedics attending to a woman with multiple injuries. She observed significant blood loss and stab wounds.
10. PW4 proceeded into the office and observed items on the desk, including cups and food. In the bathroom, she saw a bathtub with blood-stained water and an infant being retrieved by paramedics, who attempted resuscitation without success. She also observed a knife and hammer stained with blood. She confirmed the accused had been a trusted employee and did not witness his arrest.
11. PW5, Dr Sylvester Maingi, conducted post-mortem examinations. He found that the adult female had sustained multiple stab wounds, including severe neck injuries, fractured ribs, and internal bleeding. He concluded that the cause of death was excessive blood loss due to multiple sharp force injuries.
12. In respect of the infant, he observed contusions around the mouth and cheeks and concluded that the cause of death was asphyxia due to smothering.
13. PW1, Sylvester Gwero Manani, brother to the deceased, testified that he identified the bodies of Mercy Andeso and Hope Imali at City Mortuary on 14 May 2018 in the presence of a relative for purposes of post-mortem.
14. PW6, Corporal Bernard Kiplangat Serem, a scenes of crime officer, testified that he attended the scene at about 22:00 hours and documented it. He observed the body of an adult female with multiple injuries and, in the washroom, the body of an infant. A

blood-stained knife was located near the infant and a hammer was observed in a bathtub containing reddish water.

15. He produced photographs depicting the scene, including the bodies, injuries, and recovered items. He stated that certain items were moved to facilitate photography and that the scene had not been fully secured prior to his arrival.
16. PW7, Corporal Frankline Muthuiya, testified that he was on duty at Muthangari Police Station when he received a report at about 6.30 pm that two bodies had been found. He proceeded to the scene with another officer and found the bodies on the upper floor of the premises.
17. He observed that the adult female had multiple injuries and that the infant was in a bathtub. He informed his superiors and scene of crime personnel were summoned. At about 9.00 pm, a watchman alerted officers that a man previously seen with the deceased had returned. Upon challenge, the man fled but was pursued and arrested after emerging from a ditch or river area. PW7 identified the accused as the person arrested.
18. He stated that he preserved the scene pending arrival of investigators and conceded that the scene was not secured with tape and that members of the public were within the compound.
19. PW8, Jacky Kavere Isaleno, testified that she knew the accused as a neighbour and described him as quiet. She stated that police visited her residence and informed her of the deaths. She confirmed that she had no knowledge of the incident.
20. During cross-examination, she stated that the accused and the deceased had domestic disputes, sometimes involving confrontations that attracted intervention from neighbours. She

also stated that on prior occasions, groups of individuals had sought the accused, prompting advice that he relocate.

21. PW9, PC Vincent Siro, the investigating officer, testified that he attended the scene at about 8.00 pm. He found a crowd outside and was informed of the presence of bodies inside. Upon entry, he observed the body of a woman in a pool of blood and that of a baby in the bathroom. A knife and hammer were recovered.
22. He stated that scene of crime officers documented the scene and the bodies were removed to the mortuary. He relied on witness accounts indicating that the accused had been present earlier and had been seen leaving hurriedly. He further testified that the accused later attempted to re-enter the premises and was arrested while attempting to flee. The accused had visible injuries at the time of arrest.
23. PW9 stated that investigations included retrieval of call data records to verify the whereabouts of certain individuals initially suspected. Those individuals were later treated as witnesses after analysis did not place them at the scene. He concluded that there was no evidence of forced entry or theft and that the accused was the last person seen with the deceased. During cross-examination, he acknowledged that he did not witness the incident and relied on circumstantial evidence and witness statements. He also conceded limitations in the precision of call data records. In re-examination, he maintained that scene preservation had been undertaken and that the evidence gathered supported the findings of the investigation.
24. In his defence, the accused testified that he had been in a relationship with the deceased since 2014 and that their

relationship was marked by domestic disputes. He stated that on 3 April 2018, individuals allegedly associated with the deceased attacked his residence in Kawangware, prompting him to report the matter and seek refuge at his workplace.

25. He testified that on 5 April 2018, the deceased contacted him and later arrived at his place of work with their infant child. They entered the office together. The accused stated that while he was in the bathroom, he heard a disturbance and later found the child unresponsive. He alleged that the deceased attacked him with a knife, inflicting injuries, and that a struggle ensued during which both sustained injuries.
26. He testified that he sought assistance from PW2 and informed his employer. He stated that he attempted to obtain medical assistance but was initially unsuccessful. He further stated that he later returned to the premises but, upon seeing individuals he believed to be a threat, fled and hid before being arrested by police officers.
27. The accused stated that he was treated for his injuries and subsequently charged. He maintained that he acted in self-defence and had no intention to harm the deceased or the child, asserting that the events arose from a sudden and violent confrontation.
28. The Court has considered the entirety of the prosecution evidence, the defence advanced by the accused, the submissions on record, and the applicable law. The sole issue for determination is whether the prosecution has proved the two counts of murder against the accused beyond reasonable doubt.

29. The accused is charged with two counts of murder contrary to section 203 as read with section 204 of the Penal Code. Section 203 provides:

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

30. The prosecution bears the burden of proving the following ingredients beyond reasonable doubt in respect of each count:

a. The fact of death of the deceased persons.

b. The cause of such deaths.

c. That the deaths were caused by an unlawful act or omission.

d. That the accused acted with malice aforethought.

31. The fact of death in respect of both deceased persons, Mercy Andeso and the infant Hope Imali, is not in dispute. The post-mortem examinations conducted by PW5, Dr Sylvester Maingi, confirmed that Mercy Andeso died from excessive blood loss arising from multiple sharp force injuries, including severe injuries to the neck, chest and other parts of the body. In respect of the infant, Hope Imali, aged approximately three months, the cause of death was determined to be asphyxia due to smothering.

32. The medical findings establish that both deaths were the result of unlawful acts. The nature, multiplicity and severity of the injuries sustained by the adult deceased, and the deliberate obstruction of the airway in respect of the infant, exclude any suggestion of natural causes or accidental death.

33. On whether the accused was responsible for the deaths, the prosecution case rests on a combination of circumstantial

evidence and witness testimony placing the accused at the scene at the material time. PW2 testified that she heard distress screams from within the premises and shortly thereafter observed the accused emerging from the direction of the landlady's office, where the bodies were later found. She noted bloody footprints as he descended the stairs. Upon inquiry, the accused claimed he had been attacked and left the premises.

34. PW3 and PW4, who arrived shortly thereafter, found the bodies within the office and bathroom areas, with visible injuries and substantial blood loss. They also observed a knife and hammer at the scene. PW7 and PW9 confirmed that the accused was later seen attempting to re-enter the premises and, upon being challenged, fled. He was pursued and arrested within the vicinity shortly thereafter. At the time of arrest, he was partially or wholly unclothed and had visible injuries.

35. The evidence further established that the accused was the caretaker of the premises and had access to the office. There was no evidence of forced entry or presence of any third party within the premises at the material time.

36. The totality of the circumstantial evidence places the accused as the last person seen with the deceased persons and at the locus in quo at the time the fatal injuries were inflicted. His conduct immediately after the incident, including leaving the scene and subsequently attempting to flee upon return, is consistent with a guilty mind.

37. In his defence, the accused admitted that the deceased visited him at his place of work with the infant and that they were together in the office. He alleged that the deceased attacked him

with a knife and that a struggle ensued during which both sustained injuries. He further stated that he acted in self-defence and that the injuries to the deceased occurred in the course of that struggle.

38. The Court has considered the defence in light of section 17 of the Penal Code, which provides:

“Subject to any express provisions in this Code or any other law in operation in Kenya, criminal responsibility for the use of force in the defence of person or property shall be determined according to the principles of English Common Law.”

39. In Republic v Silas Magongo Onzere alias Fredrick Namema [2017] eKLR, the Court held:

“The law does not require a person under attack to measure with mathematical exactness the degree of force necessary to repel the attack. A person may act instinctively in self-defence.”

40. Similarly, in Ahmed Mohammed Omar & 5 Others v Republic [2014] eKLR, the Court of Appeal held:

“Where a person is faced with imminent danger, he is entitled to use reasonable force to avert that danger.”

41. Upon evaluation of the evidence, the Court finds that the defence of self-defence is not supported by the totality of the evidence. The nature and multiplicity of injuries sustained by the adult deceased, including multiple stab wounds to vital parts of the body, are inconsistent with a defensive or proportionate response. The injuries demonstrate sustained and deliberate application of force. Further, the death of the infant, caused by asphyxia through

smothering, is wholly incompatible with the account of a spontaneous struggle. There is no plausible explanation offered by the accused as to how the infant came to be smothered.

42. The accused's conduct after the incident, including leaving the scene without rendering assistance and subsequently fleeing upon return, undermines the credibility of his account and does not support the assertion of lawful self-defence. His actions are indicative of a guilty mind and may be relied upon as evidence that corroborates the prosecution case. (See **Bukenya Patrick & Another V. Uganda, Cr. App. No. 15 OF 2001, Supreme Court of Uganda**)

43. On malice aforethought, section 206 of the Penal Code provides:

“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 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.”

44. In determining whether malice aforethought has been established, the Court is guided by the settled principle that criminal liability requires both the actus reus and the mens rea. As was classically stated by **Sir William Holdsworth in A History of English Law, Vol. III, page 374:**

“The general rule of the common law is that crime cannot be imputed to a man without mens rea. It is, of course, quite another question how the existence of that mens rea is to be established. The thought of man is not triable by direct evidence; but if the law grounds liability upon intent, it must endeavour to establish it by circumstantial evidence. Much of that circumstantial evidence will be directed to showing that a man of ordinary ability, situated as the accused was situated, and having his means of knowledge, would not have acted as he acted without having that mens rea which it is sought to impute to him. In other words, we must adopt an external standard in adjudicating upon the weight of evidence adduced to prove or disprove mens rea. That of course, does not mean that the law bases criminal liability upon an external standard. So to argue is to confuse the evidence for a proposition with the proposition proved by that evidence.”

45. The Court further notes that the natural and probable consequences of a man's act is only one of the factors from which his intention as to the result may be gathered. The intention is to

be gathered from all the circumstances appearing in the evidence.

46. In **Rex v Tubere s/o Ochen (1945) 12 EACA 63**, the Court held:

“In determining existence or non-existence of malice one has to look at the facts proving the weapon used, the manner in which it is used and the part of the body injured.”

47. In **Hyam v Director of Public Prosecutions [1974] AC 55**, it was held:

“Malice aforethought is established where the accused knew that the act would probably result in death or serious bodily harm.”

48. In the present case, the use of a knife to inflict multiple injuries to vulnerable and vital parts of the body, including the neck and chest, demonstrates an intention to cause death or grievous harm. The multiplicity of wounds points to sustained aggression rather than a singular defensive act.

49. In respect of the infant, the act of smothering, resulting in asphyxia, is a deliberate act directed at causing death or grievous harm to a vulnerable child incapable of self-defence.

50. The Court is satisfied that the prosecution has proved beyond reasonable doubt that the accused unlawfully caused the deaths of Mercy Andeso and Hope Imali and that he did so with malice aforethought within the meaning of section 206 of the Penal Code.

51. Accordingly, the accused is found guilty on both counts of murder contrary to section 203 as read with section 204 of the Penal Code and is hereby convicted on each count.

Orders accordingly.

**Judgement dated and delivered virtually this 23rd day of
April 2026**

D. KAVEDZA
JUDGE

In the presence of:

Accused Present

Ms. Maina for the Prosecution

Ms. Soweto for the Accused

Karimi Court Assistant.