



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL CASE NUMBER 32 OF 2020**

REPUBLIC.....

.....STATE

- VERSUS -

BETH YEGON .....

.....ACCUSED

**JUDGEMENT**

1. The Accused was arraigned in court on information of murder contrary to **section 203** as read with **section 204 of the Penal Code**. The particulars of the offence state that on 24<sup>th</sup> July 2020 at Mau Summit Police Station, Kuresoi North Sub-County, within Nakuru County she murdered **Gilbert Kipng'eno Yegon**. She denied the offence.
2. Part of the prosecution evidence was recorded before two other Judges (Justices Mumbua T. Matheka and H.M Nyaga)

who have since transferred to other work stations. This court took over the case on 3<sup>rd</sup> November 2024 and directed that hearing would continue from the point the previous courts left off.

### **The Prosecution Evidence**

3. The prosecution evidence shows that the Accused and the deceased were spouses. At the material time the Deceased was a police officer based at Mau Summit Police Station and lived in the Police Station lines. On 24<sup>th</sup> July, 2020 at around 7:00 p.m. PW2, also a police officer at the same station, was walking from his house to the office when a sufuria was thrown in front of him. He noticed that the sufuria had been thrown from the house of the deceased within the Police Lines and he went to check what was happening. PW2 allegedly found the deceased on the ground with the Accused sitting on him as she assaulted him using a jembe stick on the head. The Deceased appeared drunk and the Accused was complaining that he had misused his salary and a loan he had obtained.

4. PW2 further told the court that he went to the Station's Report Office and informed his colleague Officer Lang'at (**PW4**) about the incident. PW4 confirmed receiving the report and in turn briefed his colleagues Temba (**PW5**), Rotich (**PW8**) and Ahmed. They rushed to the deceased's house where they found the Accused beating the deceased as related by PW2. They separated the couple and seized the jembe stick used in the alleged assault of the Deceased. There were, however, no visible injuries noted on the Deceased. The couple was arrested and detained in the Police Station Cells on instructions of the Deputy Officer Commanding the Station (OCS -**PW9**) for creating a disturbance in the Station Lines. The Accused was hostile to the officers who intervened.
5. In the following morning, the Deceased was said to have complained of bodily pain and the Accused was allowed to take him to hospital. He was given medical attention at St. Joseph's Hospital (Molo) and later at an Eldoret Hospital where he was admitted for about 3 months. The deceased later died.

6. PW4 continued to state that the couple frequently quarreled and the deceased used to drink a lot. Their daughter was present that evening and witnessed the incident. PW4 denied a claim that officers injured the deceased as they pushed him into the cells.
7. PW5 and PW8 affirmed PW4's evidence. According to PW5, the deceased complained that a piece of rock was also used to assault him. The rock and jembe stick were taken as exhibits.
8. PW3 was the Medical Practitioner who conducted post mortem examination of the deceased's body. A closed dislocation was noted on the right thumb. There was epidural and subdural haematoma in the head caused by blunt force trauma. The cause of death was opined to be the epidural and subdural haematoma due to the head injury. According to the Doctor, such injury could also be caused by a fall or other accident.
9. **PW9** (Investigating Officer) confirmed the evidence of her colleagues as regards the circumstances leading to the deceased's death. She told the court that the deceased had

shown her a club and a stone he had threatened to use to retaliate against the Accused. The objects were tendered in support of the prosecution case.

### **The Defence Evidence**

10. By a sworn defence, the Accused confirmed her marital relationship with the deceased but denied responsibility for his death. While telling the court that she is a resident of Olenguruone, she states that the deceased on 22<sup>nd</sup> August 2024 invited her and their daughter to visit him at his work place at Mau Summit Police Station Lines. They accepted the invite and arrived at Mau Summit in the evening. The deceased was not in and the Accused got the house keys from a place her husband had left them. They opened and entered the house. After cooking and eating, the deceased got home at around 8:00 p.m. while drunk. He shortly thereafter left for work but returned minutes later saying he was no longer going to work. The following morning, he left in the company of an Officer referred to as Rotich at around 10:00 a.m. An Officer called Lang'at later went and informed the Accused that the deceased was not reporting for duty. At around 8:30

p.m. the deceased is said to have been dropped off at home by a motorcycle rider who reported finding him lying on the ground. The accused told the court that her husband could not stand and also fell down at home. His right thumb was said to be swollen. The court was further told that Officer Lang'at and other officers led by the Deputy OCS of the Station returned to the Couple's home and protested the deceased's failure to report for duty. The Officers forcibly took the deceased to the station saying they would detain him in the cells for creating a disturbance at the Police Lines.

11. The Accused further stated that she followed the Officers to the Station while protesting her husband's arrest. At the Station, the Officers pushed the deceased into the cells, causing him to fall down. She was also arrested and detained. The following morning, she was allegedly ordered to clear the deceased's urine in the cells. The deceased could not talk and she was ordered to take him for treatment. The deceased was violently pushed into the police vehicle and he was abandoned with the Accused at St. Joseph's Hospital, Molo, where he was admitted for 3 days.

12. After his discharge, the deceased is said to have complained of headache and fainted at home. He was attended to at Olenguruone Sub County Hospital and a Kericho County Hospital before being referred to Real Hospital in Eldoret for head surgery. While the deceased was in the Hospital's Intensive Care Unit (ICU), the Accused continued to tell the court that the police arrested and charged her with assaulting the deceased. When she was released on bond, she heard of the deceased's demise.
13. The Accused blames the Police Officers for causing the injuries of which the deceased died and covering up the crime by charging her. She denies that any jembe stick or stone was in their home and described the exhibits produced in court as strange to her.
14. The Accused called her daughter (Diana Chebet - **DW2**) as her witness. She fully confirmed her mother's evidence. The witness further tells the court that she did not witness the Accused assaulting the deceased. According to DW2, her parents never feuded in the evening when her father got home.

15. The Prosecution and the Defence filed written submissions which I have perused against the evidence on record and the charge facing the Accused.
16. A person's death is presumed to have been unlawfully caused unless it is otherwise accidentally caused in circumstances that make it excusable (see **Uganda V. Lydia Draru Alias Atim HCT-00-CR-SC-0404 High Court of the Republic of Uganda and Akol Patrick & Others V. 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.
17. In **Republic V. Gideon Wambua Kioko & 2 Others (2019) eKLR** 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.**

18. The sole issue for determination is whether the prosecution has proved beyond reasonable doubt that the accused murdered the deceased, actuated by malice aforethought.
19. **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.**
20. 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)**).

21. In **Charles Kasena Chogo V. Republic {2019} eKLR and R V.** it was observed that the burden is on the prosecution to prove falsity of an *alibi* defence.

**Determination.**

22. Accused seemed to have differences with colleagues of the deceased arising from her alleged mistreatment of the deceased. The police officer's evidence therefore required independent corroboration as to whether the deceased was in fact assaulted by the deceased that evening. It is not explained why the Officers did not take him for treatment if he was indeed assaulted and instead arrested him.

23. The evidence shows that the deceased was very drunk at the material time and could not even go to work. The possibility of his injuries having been as a result of a fall as implied by the Accused may not be ruled out in the circumstances. This is even more so considering that contrary to the evidence of her colleagues that the Accused assaulted the deceased using a jembe stick, PW9 testified that their investigations showed that the jembe and a stone had been used by the deceased to defend himself from the Accused's attack. There is also no

apparent motive on the part of the Accused to kill the deceased.

24. The Prosecution therefore failed to prove the charge against the accused beyond reasonable doubt. He is acquitted of the offence pursuant to **section 215 of the Criminal Procedure Code.**

**J. M. NANG'EA, JUDGE.**

**Judgement delivered in open court this 16<sup>th</sup> day of April, 2026.**

**In the presence of:**

**Prosecution Counsel, Mr. Wakasyaka**

**Defence Counsel, Mr. Kibet**

**C/A (Mr. Ng'eno)**

**Accused, present**

**J.M. NANG'EA - JUDGE**