



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CRIMINAL CASE NO. 28 OF 2019

REPUBLICPROSECUTION

VERSUS

MORRIS MUTETI JOSEPHACCUSED

RULING

1. The accused person is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. It is alleged that on 20th August 2019 at Moke village, Masinga sub-location in Athi River Sub-County within Machakos County the accused murdered Gideon Wambua Joseph, deceased.
2. The accused pleaded not guilty to the charge following which the prosecution called seven (7) witnesses in order to prove its case. The star witness was Elizabeth Katunge Joseph (PW1). Her evidence was that the deceased and the accused are her sons. She was living at Daystar with the deceased while the accused was living separately but close to them. That on the material day she and the deceased had just returned home from running an errand when the accused went and asked her for a phone battery which she was charging for him.

3. The deceased was not impressed and so he told his mother never to charge the battery for the accused again. That incensed the accused and in a rage he pushed the deceased against a wall then picked a stone and hit him on the head. The deceased fell to the ground but the accused sat on him and continued beating him. PW1 shouted for help but nobody went to her aid and fearing that the accused would kill his brother, she got an axe and hit the accused on the leg. The accused turned on her and hit her. She fell but immediately picked herself up and took refuge in her house. The accused followed her but he could not access the house as she had locked it. She waited for him to leave and got out and accompanied the deceased to Somola police post where they made a report only to be referred to KMC police station. They filed a report at KMC police station then went to a hospital at Athi River. The deceased was referred to Machakos Level 5 Hospital where he died three days later while undergoing treatment. PW1 went back to the police station and reported the death of the deceased. It was then that the accused was arrested. A post mortem was later conducted and the cause of death was ascertained to be complications of traumatic brain injury (see post mortem produced as Exhibit P.3). The accused was subsequently charged with this offence.

4. At this stage the court is enjoined to, upon hearing arguments from the prosecution and the defence, determine whether the accused has a case to answer. See Section 306 (1) of the Criminal Procedure Code which states:

“.....When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence shall, after hearing, if necessary, any arguments which the advocate for the

prosecution or the defence may desire to submit, record a finding of not guilty.”

5. In her submissions, Ms Makena Kaburu, learned Prosecution Counsel, urged that the prosecution had adduced evidence sufficient to prove that the accused was involved in the death of the deceased. That it had indeed proved all the ingredients of the offence of murder beyond reasonable doubt. She placed reliance on the following cases:-

- ***Republic v Mohammed Dadi Kokane & 7 others [2014] eKLR.***
- ***Republic v Daniel Musyoka Muasya, Paul Mutua Musya and Walter Otieno Ojwang – Msa HCCR No.42 of 2009.***
- ***Ronald Nyaga Kiura v Republic [2018] eKLR.***
- ***Bhatt v Republic [1957] EA 332.***
- ***Republic v Jagjiwan M. Patel & others (1) T.L.R (R) 85.***

6. For the accused, learned Counsel Mr. Kituku, submitted that a prima facie has not been established as *mens rea* was not proved; that there is evidence that the accused's mother also took part in the fight and it is not clear as to who started the fight. Counsel argued that the benefit of doubt should be given to the accused person. Counsel further submitted that there is proof that the accused suffers from mental illness and for that reason this court ought to find that he was incapable of having the *mens rea* to commit the offence and acquit him at this stage.

7. Having carefully considered the evidence of the prosecution witnesses as well as the rival submissions of the parties, my finding is that there is evidence that the accused person killed the deceased. The cause of death as set out in the

post mortem form and the testimony of the doctor (PW5) who conducted the autopsy, is consistent with the evidence of the key witness who was the only eye witness to the crime. It is clear from the testimony of PW1 that the accused was the aggressor. It is also clear that the only reason she got involved in the incident was so as to save the deceased from the accused although she did not succeed.

8. The inconsistency in the evidence of Sgt Halima (PW7 as to whether it was she or another officer who took the exhibits to the government chemist, is in my considered view, fatal to the prosecution's case.
9. As to whether or not the accused could have formed an intention to kill the deceased (*mens rea*) due to mental illness should be left to him to prove since in our jurisdiction insanity is a defence which is left to the accused to establish as the law presumes every person to be of sound mind unless otherwise proved – see **Section 11 of the Penal Code**.
10. Moreover, even a person whose mind is affected by disease can still be found criminally responsible for an act or omission in certain circumstances – see **Section 12 of the Penal Code**. In the premises this court finds that the accused has a case to answer and he shall therefore be required to enter his defence as provided in **Section 306(2) of the Criminal Procedure Code**.

It is so ordered.

Ruling signed, dated and delivered virtually on this 30th day of April 2026.

E. N. MAINA

JUDGE

In the presence of:

No appearance for the State

Mr. Kevosi for Mr. Kituku for the Accused person

The accused person

Mary - Court Assistant/Interpreter

ORIGINAL