

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIAMBU
CRIMINAL MURDER CASE NO.E030 OF 2021

REPUBLIC.....PROSECUTOR

VERSUS

JOHN KENEIYA MUTURI..... ACCUSED

JUDGMENT

A. INTRODUCTION

- 1.The accused person was charged with the offence of murder contrary to **section 203 as read with section 204 of the Penal Code (Cap 63)** of the Laws of Kenya. The particulars of the offence were that on the 30th day of August 2020 at around 8.00pm at Wangige location in Kabete Sub- County, Kiambu County he murdered “**SERAH NUNGARI.**”
2. The accused person denied the charge faced and pleaded not guilty. The case proceeded to full trial with the prosecution calling five (5) witnesses in support of their case.

B) PROSECUTION CASE

- 3.**PW1 Cosmas Gakunya Muthoni** testified and stated that the deceased was his younger sister, who resided with the accused at Wangige in a come we stay relationship and he

would visited them severally as his deceased sister also resided with their mother. On the material night he was at his house, at around 8.30pm, when he heard screams from the road and out of curiosity went to check on what was happening and was shocked to find that his sister had been stabbed on her back and was lying down by the footpath leading to her house.

4.He proceeded to inform the area chief and also went and reported the incident at Kingeroo police station, who dispatched a team of police officers to secure the scene. PW1 identified the knife, which was used to stab the deceased on her back, and noted its unique metallic handle. He further confirmed that accused and the deceased had a turbulent relationship and, on several occasion, had been called to mediate over their domestic disputes. Further, during the said incidences, the accused would physically assault the deceased and he had been arrested a couple of times, but the deceased would eventually withdraw the complaint and not press charges.

5.After the last assault incident, the deceased opted to move out and the accused had told her in his presence, that she would live to regret the said decision. Under cross examination, PW1 confirmed that he did not witness the murder, but was told by his cousin "*Wanjiru*", that it was the accused who had waylaid the deceased and proceeded to inflict the fatal stab wound on her back.

6. **PW2 Joseph Kimani Wanjiru** confirmed that the deceased was his mother-in-law, and he also knew the accused person who was the deceased boyfriend, though as a family they did not approve of the said relationship. He confirmed that the accused and the deceased had a turbulent relationship that led to the accused physically assaulting the deceased on several occasions, necessitating their intervention as family member's. At some point they decided to get the deceased a new house and moved her thereat, but the accused still followed the deceased and they resumed cohabiting.

7. The said physical fights between the two continued and in one instance, they were chased away from their house, where they had moved into, because the accused had during one of their fights broken the windows of all neighboring houses. After this incident, the two parted ways, but the accused would continuously stalk the deceased and continuously threaten her. The accused extended his threats to the deceased family members and PW2 further recalled another incident, where after they had separated, the accused had accessed the deceased house and burned all her cloths. Due to this state of affair, they as a family had decided to host the deceased due to their concern for her safety, but this did not deter the accused as he continued to stalk the deceased, and even had the audacity to come to his house at night to look for the deceased and had to be chased away.

8. The deceased did reside with his family for a short while, then she moved to her son's house, (John Kinuthia), before eventually deciding to get her own house. Unfortunately, on the same evening she moved to her house, she was attacked by the deceased and was fatally stabbed. Though he did not witness the incident, there was neighbor who passed and saw the two converse by the roadside and immediately thereafter after she entered her house, heard the deceased scream for help. The said neighbour had dashed back only to find that the deceased had been stabbed on her back, and the accused had taken off.
9. PW2 also confirmed that he later identified the deceased body at Gachie Mortuary before autopsy was undertaken. After the said incident the accused went underground for about one year before the police managed to trace and arrest him. He identified the butcher knife used to stab the deceased and also confirmed that the accused was a person well known to him and identified him on the dock.
10. Under cross examination, he confirmed that he did not witness the incident, but was informed of what transpired immediately after the incident occurred. He further confirmed that the deceased had made/recorded several complaints as against the accused, though he did not have the specific OB numbers with him in court. He also confirmed that after the incident had occurred, the accused would still call his wife and her siblings and continued to threaten to harm them.

11. **PW3 John Kinuthia** confirmed that the deceased was his mother, who had been in a tumultuous relationship with the accused person, forcing them as her children to severally intervene. On the material night at about 7.00pm, he was with the deceased at Wangige market and bought for her milk and bread before they parted ways. After about one hour, his wife called to inform him that the accused had stabbed his mother. He dashed to the incident scene and confirmed the same. He later attended the post mortem at Gachie mortuary and identified the deceased body before the autopsy was conducted.

12. PW3 also confirmed that after the incident, the accused would directly call him and brag about what he had done and would also call and threaten his sisters. Under cross examination he reiterated his earlier evidence and confirmed that the relationship between the accused and the deceased was toxic. He further confirmed that even though he did not witness the incident, the accused personally called him and bragged about what he had done and continued to threaten them.

13. **PW4 Dr. Peter Ndegwa**, a consultant pathologist confirmed that on 2nd September 2020 at Kiharu Sub County Hospital, he conducted an autopsy on the deceased, who sustained two stab wound injuries below the left clavicle,

which wound was 2.5 cm deep and the second wound was below her left shoulder blade also about 2.5 cm deep. The chest wound penetrated into the deceased heart and he established that the cause of death was exsanguination (hemorrhage due to sever chest injury caused by penetrating sharp force trauma consistent with assault). PW4 produced the post mortem report as an exhibit before the court and under cross examination confirmed that the deceased sustained fatal stab wound injuries on her front chest and on her back.

14. **PW5 Cpl Bonface Odhiambo**, previously attached to DCI-Kabete stated that on 30.08.2020 at about 10.00pm, he was at his house, when he received a call from his boss, Chief Inspector Peter Mikisi, who informed him of the murder incident. He mobilized his fellow officers and proceeded to the scene of crime, where they found the deceased lying in a pool of blood and had a metallic knife stuck on her back. They called the scenes of crime, who processed the scene and thereafter transferred the body to Kiharu Sub County hospital mortuary.

15. They did not find the accused person at the scene of crime, and proceeded to record witness statements, which implicated the accused person. Later on, 28th April 2021, they got information that the accused person had been arrested at DCI Kiambaa over a different offence and they had him rearrested, processed and charged in court with the offence

of murder. Under cross examination he confirmed that all witnesses implicated the accused as the person who had the motive to kill the deceased and his action of running away and hiding for 6 months betrayed his innocence. He was guilty and that is why he went into hiding.

16. The prosecution closed their case and upon considering the prosecution evidence, the court placed both accused on his defence.

C. DEFENCE CASE

17. The Accused (DW1) opted to give sworn evidence and confirmed that the deceased was his girlfriend, but was categorical that he did not harm her as alleged. On the material day, they had gone to church and came back home. Later in the evening they went to “*Buffalo bar*”, where they partook of Alcohol and ate dinner before they decided to walk back home. Enroute, they found a car parked by the roadside and immediately after they passed the said car, three persons emerged therefrom and attacked them. He knew two said persons; one used to sell meat at “*Shirikish butchery*” and the other assailant was known as “*Mbugua*”, the deceased Ex- boyfriend, but was not able to identify the last assailant.

18. The deceased Ex-boyfriend (Mbugua) removed a knife and attempted to stab him, but in self defence blocked the attack using his left hand causing him to sustain a stab

wound on his left hand. Mbugua then proceeded to stab him on his stomach, and buttocks, but luckily the said stab wounds were not deep. Mbugua then turned his attention on the deceased and proceeded to stab her on the chest and stomach and again turned to him and stabbed him right above his eye. At that point, he lost consciousness and woke up the following morning around 6.00 am. He shouted for help and luckily for him, there were construction workers going to work, who heard his cry for help and rescued him and took him to a private hospital.

19. Later that afternoon, he did go back to Wangige and found his step son cooking for his grandmother. He called him aside and informed him of his wife's death and when he went to report to the police what had occurred on the previous night, he was arrested and placed under custody. He later explained himself to the OCS and was release, but as the funeral plan was ongoing, strong rumors kept on swirling that he was involved in the deceased death and this caused him to run away to Narok due to fear of his life. Later he did relocate to Mai Maiu, where he was arrested in May 2021.
20. Under cross examination the accused confirmed that the deceased was his wife and that he did not have any documents to show that he was treated after being attacked on the night of 30.08.2020. He also did not have any OB number to confirm that he had reported the assault that had occurred.

D. DETERMINATION

21. I have read through and considered the evidence adduced by both parties and given due consideration to the submissions filed by both Counsels. The question that arises before this court is whether the prosecution has proved beyond reasonable doubt that the accused person herein murdered **SERAH NUNGARI**, the deceased herein.

22. **Section 203 of the [Penal Code](#)** defines the offence of murder as follows:

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

23. In **Joseph Kimani Njau vs Republic (2014) eKLR**, the Court of Appeal, in concurring with an earlier finding of that Court (but differently constituted) in **Nzuki vs Republic (1993) KLR 171**, held as follows: -

Before an act can be murder, it must be aimed at someone and in addition, it must be an act committed with one of the following intentions, the test of which is always subjective to the actual accused; -

- i. The intention to cause death;***
- ii. The intention to cause grievous bodily harm;***
- iii. Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from his acts, and***

commits those acts deliberately and without lawful excuse with the intention to expose a potential victim to that risk as the result of those acts.

It does not matter in such circumstances whether the accused desires those consequences to ensue or not in none of these cases does it matter that the act and intention were aimed at a potential victim other than the one succumbed The mere fact that the accused's conduct is done in the knowledge that grievous harm is likely or highly likely to ensue from his conduct is not by itself enough to convert a homicide into a crime of murder. (See Hyman vs. Director of Public Prosecutions (1975) AC 55".

24. The Court of Appeal at Nyeri in **Criminal Appeal No. 352 of 2012 Anthony Ndegwa Ngari vs. Republic [2014] eKLR**, also summed up the elements of the offence of murder as follows: -

- a. the death of the deceased and its cause;***
- b. that the accused committed the unlawful act which caused the death of the deceased; and***
- c. that the accused had malice aforethought.***

25. I will now proceed to interrogate each issue.

(i) The death of the deceased and its cause.

26. It is common ground that **SARAH NUNGARI** died on 30.08.2020 at around 8.00pm at Wangige location, within

Kabete Sub County, Kiambu having suffered two fatal stab wounds to her back and chest. This was confirmed by all prosecution witnesses, who went to the scene of crime. **PW4 Dr Peter Ndegwa** also produced the post mortem report dated 02.09.2020, wherein he confirmed that the deceased died as a result of exsanguination due to sever chest injuries due to penetrating sharp force trauma consistent with assault.

27. Death and its cause were thus proved.

(ii) Whether it has been proved that the accused committed the unlawful act which caused the death of the deceased:

28. From the evidence adduced, it is clear that none of the witnesses saw the accused stab the deceased, but they all testified and affirmed the tumultuous nature of the said relationship, which was characterized by consistent violence meted on the deceased by the accused and his conduct of stalking her even after they had parted ways. PW3 also confirmed that after the incident had occurred the accused would call him and his siblings and brag about what he had done and continued to threaten them.

29. Be that as it may, proof in criminal cases can either be by direct evidence or circumstantial evidence. When a witness, such as an eyewitness, asserts actual knowledge of a fact, that witness' testimony is direct evidence. On the other

hand, evidence of facts and circumstances from which reasonable inferences may be drawn is circumstantial evidence. Therefore, where circumstantial evidence meets the legal threshold, it may well be a basis for finding the accused person culpable of the offence charged. In fact, in **Neema Mwandoro Ndurya v. R [2008] eKLR**, the Court of Appeal cited with approval the case of **R vs. Taylor Weaver and Donovan (1928) 21 Cr. App. R 20** where the court stated that:

“Circumstantial evidence is often said to be the best evidence. It is the evidence of surrounding circumstances which by intensified examination is capable of proving a proposition with accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial.”

30. In **Abanga Alias Onyango vs. Rep CR. A No.32 of 1990 (UR)** the Court of Appeal set out the principles to apply in order to determine whether the circumstantial evidence adduced in a case are sufficient to sustain a conviction. These are:

“It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests:

(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established,

- (ii) (ii) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;**
- (iii) (iii) the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else."**

31. Therefore, for this court to find the accused guilty the inculpatory facts must be incompatible with innocence and incapable of explanation upon any other hypothesis than that of guilt. This proposition was well stated in the case of **Simon Musoke vs. Republic [1958] EA 715** as follows:

"It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference.

32. In summation, of the aforesaid case law, it is thus required that before any conviction based on circumstantial evidence is reached, the said evidence must be adequate to prove the case on the required standard of beyond reasonable doubt. In that regard, the court will admit circumstantial evidence if it meets the following criteria;

a) Evidence that is logically connected to the case.

- b) The evidence must prove or disapprove a fact relevant to the case.**
- c) The evidence should be reliable, trustworthy with minimal chance of falsehood.**
- d) Its potential to influence a decision should not outweigh the probative value.**
- e) The evidence should not be hearsay.**

33. Pursuant to the foregoing it would be safe to conclude that circumstantial evidence may include;

- a) Physical evidence, such as fingerprints or DNA, that connects the accused to the crime or scene of crime.**
- b) Documentary evidence, for example, documentary records and text messages that support inference of guilt.**
- c) Behavioral evidence includes the accused's actions that point to his guilt or involvement in the crime. Examples include running away after the offence is committed or attempting to destroy incriminating evidence.**

34. PW1, PW2, and PW3 explained at length the tumultuous and toxic relationship that the deceased and the accused had over a period of about two years leading to her death. By the time the incident occurred that deceased had already

cut off ties with the accused, who continuously stalked her and refused to let go. From the said evidence, it can clearly be adduced that the accused was a jilted lover, who had refused to let go of the deceased.

35. Though, no eye witness testified, PW1 confirmed that the accused had threatened to harm the deceased in his presence, when they parted ways and she moved out. PW3 also confirmed that the accused subsequent to the murder would call him and his siblings (sisters) and brag over what he had done and continued to threaten them with harm. The final straw was the accused action after the said murder. He ran away and went into hiding for about 6 months until his arrest. The said action was inconsistent with his innocence.
36. In Defence, the accused confirmed that he was with the deceased on the material night but alleged that they were waylaid by the deceased former boyfriend, known as "*Mbugua*" and 2 of his friends, who proceeded to attack and stab both of them. It is the courts finding that If indeed he was stabbed on the hand, stomach, buttocks and on his head as alleged, nothing would have been easier than for him to produce medical documents to support the same and/or OB Number detailing the report made in that regard. The accused failed to do so and to that extent I do find that the said defence was untruthful, and remains a figment of his fertile imagination.

37. Therefore, based on the accused, prior violence, liberally melted out on the deceased, his refusal to let go of the said affair after the deceased had ended it, his action of continuing to threaten and stalk the deceased, calling PW3 and his sisters to sneer at their pain and his action of going into hiding immediately after committing the said act, confirmed without doubt that the accused is the person who inflicted the fatal stab wounds upon the deceased and is the guilty party.

38. Simply put, when all the evidence presented is considered, the veracity of the prosecution evidence forms a complete chain of events that unerringly points at the accused as the guilty party who had a hand in the murder of “ **Sarah Nungari**” and leads to the inescapable conclusion that within all human probability, the murder which occurred was without doubt committed by him.

(iii) Malice Aforethought

39. Having found that the prosecution has proved **actus reus**, the other issue for determination is whether malice aforethought can be inferred from the prosecution's evidence presented. The offence of murder is complete when “**malice aforethought**” is established. **Section 206** of the **Penal Code**, provides that:

“(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 bodily 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.”

40. It is sufficient to say that the mental element required by **section 206 of the Penal Code** can be equated to broad guidelines set out in the case of **Tubere s/o Ochen vs. Republic [1945] 12 EACA 63:**

“The weapon in possession of the accused while carrying out the intention, the manner in which it was used to strike the human being whether one off blow or violent multiple blows, the conduct of the accused in fleeing from the scene afterwards, the permanency or dangerous severity of the bodily harm and that cumulatively the death of the deceased must ensue from the bodily harm intentionally inflicted.”

41. In assessing the weight to be given to intention as an element of murder, the relevant circumstances must be considered as to whether the appellant foresaw the real or

substantial risk and the consequences of targeting the part of the body that may result in the fatal injuries suffered by the deceased.

42. A similar statement of Law was made in the persuasive authority of **S. vs. Sigwahla 1967 4 SA 566**, in which the court stated:

“The expression intention to kill does not in Law, necessarily require that the accused should have applied his will to compassing the death of the deceased. It is sufficient if the accused subjectively foresaw the possibility of his act causing death and was reckless of such a result. This form of intention is known as a dolus eventualis as distinct from dolus directus.”

43. From an analysis of the injuries inflicted, it is clear that the accused did not have any other intention other than to murder the deceased as he directly stabbed her in her chest and back using a sharp knife. It is my finding that accused person knew or ought to have known that his action would result in death, and it can be safely inferred from the nature of the injury inflicted on the deceased that the accused person's action was premeditated.

44. In the circumstances, I am persuaded beyond reasonable doubt that the prosecution has proved their case, and specifically, the presence of malice aforethought on the part of both the accused, too, has been proved.

E. DISPOSITION

45. Accordingly, it is my finding and holding that the prosecution has proved all the ingredients of the Information of murder against the subject herein, **JOHN KENEIYA MUTURI**, beyond reasonable doubt and accordingly convicted both of them under **section 215 of the Criminal Procedure Code**.

46. Sentencing will await the filing of a pre-sentence report by the probation and aftercare services department, within the next 21 days.

47. It is so Ordered.

Judgment, signed at MARSABIT this 27th day of APRIL, 2026.

FRANCIS RAYOLA OLEL
JUDGE

Judgment read and delivered in open court on this 27th day of APRIL 2026.

In the presence of:-

.....**Accused**

.....**For O.D.P.P**

ORIGINAL