

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. E010 OF 2023

REPUBLIC PROSECUTION

VERSUS

**ZACHARY MURIUNGI M' RINKANYA.....
ACCUSED**

JUDGMENT

1. The accused is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars of the offence are that on 11th January 2023 at Matetu sub-location, Makandune location within Imenti central sub-county murdered one Judith Kathambi.
3. The accused denied the charge. The prosecution called five witnesses. Their evidence is summarized as follows:
4. Peter Kimathi (PW1) told the court that on 10/01/2023 at around 7:30 pm, the deceased went to his bar and wanted to purchase alcohol. She was drunk and was bleeding from the chest. On seeing her injuries, he instructed his employee not

- to sell alcohol to her. The deceased declined an offer to be taken to the hospital and she left.
5. Syrus Muthee (PW2) stated that he learnt of the death of the deceased, who was his daughter and he went to report the case. He further stated that the deceased and the accused were in a relationship.
 6. PW3 was police corporal Fredrick Anyona. He stated that the accused surrendered to the police after the incident. He also went to the accused's home and recovered the deceased's body. He described how he found the scene.
 7. PW4 was police sergeant Andrew Nyaga. He was the investigating officer. He described how he found the scene which was in the accused's house. He identified a blood stained knife and rungu. The deceased's body had multiple injuries which were set out in the post mortem examination report which he produced as an exhibit.
 8. PW5 was the crime scenes officer who documented the scene.
 9. The accused elected to remain silent but called one witness, one Naaman Gatobu. He stated that on the material day he

was with the deceased and the accused. The accused gave the deceased some Kshs.1,000/= to do some shopping and then they went to a local pub and imbibed some alcoholic drinks. They moved to another centre where they took more alcohol. At 2:00 pm he and the accused wanted to leave the bar, but the deceased refused so they left her. Later he returned to the bar. He saw the deceased holding a currency note that was blood stained. He noted that she was bleeding from her chest. Later he learnt that the deceased had passed on.

10. Being a case of murder, the onus is on the prosecution to prove the following ingredients:-

- a) ***That there was the death of the deceased and the cause of the said death.***
- b) ***That the death was caused by unlawful acts or omission***
- c) ***That the accused committed the unlawful act which caused the death of the deceased***
- d) ***That the accused had malice afore thought.***

11. From the evidence adduced, not a single witness identified the accused as having been seen attacking his wife. With lack of direct evidence, the prosecution case heavily relies on circumstantial evidence.
12. The application of circumstantial evidence in criminal cases has been discussed by the superior courts many times over. In the case of **Kipkering Arap Koske And Another V Republic (1949) E. A. C. A. 135** the Court of Appeal stated as follows;

“As said in Wills on ‘Circumstantial Evidence’ 6th Edition P. 341 in order to justify the inference of guilt the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. The burden of proving facts which justify the drawing of this inference from the facts to the exclusion of any reasonable hypothesis of innocence is on the prosecution and always remains with the

prosecution. It is a burden which never shifts to the party accused.”

13. In the case of **R v Hillier (2007) 233 A.L.R 63, Shepherd v R {1991} LRC CRM 332** it was held that:

“The nature of circumstantial evidence is such that while no single strand of evidence would be sufficient to prove the defendant’s guilt beyond reasonable doubt, when the strands are woven together, they all lead to the inexorable view that the defendant’s guilt is proved beyond reasonable doubt. It is not the individual strand that required proof beyond reasonable doubt but the whole. The cogency of the inference of guilt therefore was built not on any particular strand of evidence but on the cumulative strength of the strands of circumstantial evidence.”

14. Further in **Philip Muiruri V Republic Criminal Appeal No 76 OF 2012**, the learned judge referred to the South African case of **Ricky Ganda V The State (2012) ZAFSHC 59**,

Free State High Court, Bloemfontein, which stated as follows;

“.....the proper approach is to weigh up all of the elements which point towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and having done so, to decide whether the balance weigh so heavily in favour of the state as to exclude any reasonable doubt about the accused’s guilt.”

15. The evidence mounted against the accused is to the effect that she had multiple injuries.
16. The cause of death was said to be acute subdural hematoma following blunt force to the head. She also had multiple injuries on her body, head and both upper and lower limbs.
17. The police officers who visited the accused’s house found her partially naked body lying on the floor over a checked blanket.

18. There was blood on the floor and the walls. Two knives and a wooden stick, all stained with blood, were recovered from the said house.
19. It is evident that the attack on the deceased had taken place inside the house, where she was living with the accused. The injuries could not have been self- inflicted, obviously.
20. The accused was with the deceased that day. His own witness (DW1) confirmed as much. He left them together when he went home and on his return, he found the deceased in the bar trying to purchase some alcohol, which attempt was declined by the bar owner.
21. In my view, the circumstantial evidence irresistibly points to the accused person as the one who assaulted the deceased in their home. When the police visited the scene, he was not present. He surrendered to the police five days later.
22. Having carefully examined the circumstantial evidence, I am of the opinion that it is only the accused who could have committed the assault. He had access to his own house, where he lived with the deceased.

23. It may be argued that he was not found with any blood stains but it has to be remembered that he went underground for (5) five days.
24. Malice aforethought is a key ingredient in a murder case. It is what distinguishes the offence from that of manslaughter.
25. Section 206 of the Penal Code provides the definition of malice aforethought and it reads as follows;

'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 bodily

harm is caused or not, or by a wish that it may not be caused;'

26. Thus, the ingredient of malice aforethought can be express or implied. It can be deemed to have been established by evidence which proves an intention to cause death of or to do grievous harm to any person, whether that person is actually killed or not.
27. There are numerous authorities that have dealt with the manifestation of malice aforethought on a charge under Section 203 of the Penal Code.
28. For instance, in **Rex v Tubere s/o Ochen {1945} 1 EACA 63**, Eastern Court of Appeal observed:

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

29. In addition, in the case of **Hyam v DPP {1974} A.C.** the Court held inter alia that:

“Malice aforethought in the crime of murder is established by proof beyond reasonable doubt when during the act which led to the death of another the accused knew that it was highly probable that, that act would result in death or serious bodily harm.”

30. Looking at the extent of the injuries on the deceased, I am of the view that they were meant to cause grievous harm or death to the deceased. Therefore, malice aforethought has been proven.
31. The defence of the accused, through his witness only adds to the weight of the prosecution case. It confirms that the accused was with the deceased on that material day.
32. After examining all the evidence, I find that the prosecution has proven its case to the required standard in law.
33. The accused is thus convicted on the offence of murder contrary to section 203 as read with section 204 of the Penal Code.

**Dated, signed and delivered at Meru on this 23rd day of
April 2026.**

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H. M. NYAGA

JUDGE