



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Republic v Eregai (Criminal Case 20 of 2019)
[2025] KEHC 731 (KLR) (27 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 731 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL CASE 20 OF 2019
GL NZIOKA, J
JANUARY 27, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

FRED MWONJORIA EREGAI ACCUSED

JUDGMENT

1. The accused is charged with the offence of murder contrary to section 203 as read together with section 204 of the Penal Code of Kenya (Cap 63) Laws of Kenya.
2. The particulars of the offence are that on the 28th day of November 2019, at Karagita location in Naivasha Sub-County within Nakuru County, he murdered Valerian Njeri Ndonu.
3. The charge was read to the accused and he pleaded not guilty thereto. The case proceeded to full hearing with the prosecution calling a total of twelve (12) witnesses. The prosecution case is that, the accused and deceased were neighbours. That the deceased was a form 2 student while the accused was in form 3. That the deceased would seek for academic assistance from the accused.
4. That on the material date, the deceased went to the accused's home to be assisted with school homework assignment. That she did not return home and the parents looked for her all over in vain. Consequently, the matter was reported at the Karagita police post. That the following day a body of a girl was found along the road and the deceased's father PW6 John Ndonu notified.
5. The deceased father (PW6) Ndonu testified that he proceeded to the scene and found it was this daughter's body. That it was naked and he asked the accused who was a neighbour to collect a sheet to cover the body. That the matter was then reported to the DCIO at Naivasha who attended to the scene and condoned it off for preservation and/or deter interference.



6. That there was dragging marks at the scene leading to the accused's parents' home. Apparently quite a number of members of the public had gathered at the scene and following the marks, the officers and members of the public ended up at accused's parents' home where the accused was staying.
7. That the police officers ordered the accused's parents to open the door to their house and allow them access and they were allowed entry. That the officers started interrogating the accused and at the same time noticed blood on the seats in the sitting room, kitchen and bedroom. Further that, there was a lot of blood under the bed of the accused and several clothes had blood stains.
8. That the officers also noticed blood on the accused's legs and inquired from him as to where the blood came from and he said that he had cut himself while cutting grass. That upon further inquiry as where he was cutting grass, the accused changed the response and said he had slaughtered a hen. He was then held as a suspect.
9. According to PW4 Mbugua Wambui, the accused gave in and narrated how he killed the deceased. That he had invited the deceased to their home to do revision and in the process, he asked to make love to her but she declined and a struggle ensued. That the deceased overpowered him and tried to escape but he took a knife and stabbed her on the back.
10. That the deceased bleed on the sofa set resulting into the blood on the cushion on the sofa set. That he went into shock and took the deceased to the bedroom as she was in pain. That after he realized that she was unconscious he further stabbed her on the face, chest and back and then tried to wipe the blood using his black trouser which was blood stained and then hid the body beneath the bed, hence the blood under the bed.
11. That upon inquiry as to where he took the clothes of the deceased the deceased led the officers to a pit latrine in their home and upon checking therein, the officers saw a white dress. That the accused was arrested and the body of the deceased taken to the mortuary for post mortem.
12. The post mortem was conducted by Dr. Titus Ngulungu who concluded that the cause of death was sharp trauma to the head and other parts of the body in line with homicide. He took vaginal swab and pubic hair for DNA. In the meantime the accused was charged as herein stated.
13. At the close of the prosecution case the accused was placed on his defence and denied to have killed the deceased and/or confessed to killing her. He testified that, they were general friends and known each other since 2019 and discussed about academics.
14. That on the material date the deceased went to their house to be assisted with her school assignment. However she confronted him as to why he had stopped texting her and he informed her that it was because she had sent him a weird message and when he required her to explain the message, she got angry and advanced towards him whereupon a provocation occurred and she injured him.
15. That, the subject message was talking about blood and a woman called Pamela. That the lady Pamela was asking for blood. That the message was in his telephone which the police officers took and therefore he could not produce it in court.
16. The accused acknowledged that he heard the prosecution witnesses testify that, he killed the deceased but stated that he was not able to comprehend what he was saying as he was in a state of confused mind and that it was not his intention to do what he did. That he apologized to the parents of the deceased for putting them in the state in which they were in. Furthermore, he has taken steps to go for guidance to help himself recover from what he did and that is an isolated incident.



17. At the conclusion of the trial each party filed their respective submissions. The prosecution vide submission dated, 8th April 2024 submitted that, it has proved the three elements of the offence of murder being; occurrence of death proved by the evidence of PW2 John Njuguna Nganga who found the body on the road, PW3 Cecilia who identified the body at the morgue and PW9 Dr. Titus Ngulungu who performed the post mortem.
18. That, the cause of death was indicated in the post mortem report that it was as a result of sharp and force trauma to the head and other body parts. Further, Dr. Ngulungu confirmed that, the deceased was of good health prior to her death and that the cause of death was in line with homicide. Thus, the death was not accidental nor excusable. Further it was unlawful and violated article 26 of the Constitution of Kenya that gives each person a right of life.
19. The prosecution further submitted that, the evidence of PW7 Grace Ruguru Mwonjoria and PW8 Martin Akai Eregai, the parents of the accused confirmed that, the murder tool was in the house where the accused lived. Further the government analyst testified that DNA profile generated from the clothes recovered from the accused's house had the blood of both accused and deceased. Furthermore the accused apologized to the deceased's parents for putting them through the process.
20. That the afore circumstantial evidence places the accused at the centre of the murder of the deceased. The prosecution relied on the case of Uganda -vs- Mariraguna Theozene 2023 UGH CCRD 33.
21. It was further submitted that, the injuries the deceased sustained indicate that, the accused had malice. That PW12 No. 85439 PC John Kinyonge produced two (2) knives recovered from the accused's house and that the deceased body was naked. Further the accused's parents said that he was tempered on the material night.
22. Furthermore the accused wiped off the blood of the deceased, and the stabs on the head, neck and back prove malice aforethought. The prosecution urged the court to find the accused guilty and convict him.
23. The defence on its part submitted that, it is not in dispute that the death of the deceased occurred. However, section 206 of the Penal Code gives instances when malice aforethought is established. That, the offender stabbed the deceased out of provocation of love message. The defence cited the case of; Benson Mbugua Kariuki -vs- Republic No. 29 of 1978 where the elements of provocation were dealt with. The defence further submitted that, the accused cannot be sentenced to death as at the time the offence was committed as he was only seventeen (17) years old as evidenced by the birth certificate produced in evidence. The defence relied on the case of O.O.N (a minor) -vs Republic (2004) eKLR and the provisions of section 190, 191 and 237 of the Childrens Act. Further reference was made to the case of Dennis Motanya Mokua & Another -vs- Republic (2014) eKLR and the provisions of section 25 of the Penal Code.
24. Finally the defence argued that, section 4 of the Childrens Act and Article 53(2) of the Constitution of Kenya implores upon the court to consider the best interest of the child.
25. At the conclusion of the case and in considering the evidence adduced by both parties and their respective submissions I find that the section 203 of the Penal Code under which the accused is charged states as follows: -

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



26. Pursuant to the afore provision and several court decisions including Joseph Githua Njuguna vs Republic (2016) eKLR and Milton Kabulit & 4 others v Republic [2015] eKLR the elements of the offence of murder is settled that, the prosecution must prove: -
- a. The death of the deceased occurred and the cause of that death;
 - b. The appellant committed the unlawful act which caused the death of the deceased; and
 - c. The appellant had harboured malice aforethought.
27. On the first element there is no dispute that the death occurred and the cause thereof. In that regard several witnesses including the deceased's parents; PW5 and PW6, and the accused's parents PW7 and PW8, testified to the effect that, the deceased is indeed dead. The post mortem conducted on her body by Dr. Ngulungu confirmed two issues, that indeed she was dead and that, the cause of death was not out of natural events. That it was homicide. That settles the first element.
28. The next issues to consider is whether it is the accused who committed the offence and whether he had malice aforethought. In answering the subject issues, it is clear from the evidence herein that the accused and the deceased were school going students in form three and two respectively. That, the accused used to assist the deceased with school assignments. The accused acknowledges the same.
29. Further, it is not in dispute that on the material date, the deceased went to the accused's home to seek for help in revision and never returned home. PW1 Valentine Jebet who was with the deceased confirmed that the deceased had school assignment and she did not know the answers, so the deceased told her that she would get answers from the accused who was in form three (3) in a national school. That they called the accused and the deceased went to the accused's parents' gate and did not return home until she was found dead the following day.
30. In addition the evidence of (PW4) Mbugua Wambui is that there were dragging marks at the scene where the body of the deceased was found an indication that, it was pulled to where it was. That, the drag marks led to the home of the accused's parents and upon entry therein, blood stains were found on the ground and several places in that house.
31. Furthermore there were several items with blood stains in that house and a white dress in the pit latrine. The above evidence of (PW4) Mbugua was corroborated by the evidence victim's parents of (PW5) Mary Goreta Chepleting and (PW6) John Ndonu. Further (PW7) Grace Ruguru the accused's mother confirmed that, there was blood near the door to the accused's bedroom. She described it as "a line of blood".
32. In addition, (PW11) Silvester Simba the Scene visiting officer took photos of the scene showing dragging marks, leading to the accused's parents homestead and spilled blood that led to one of the bedroom therein. Further evidence reveal that kitchen knives believed to have been weapons of murder were recovered in accused's parents' house where the death is believed to have occurred.
33. Furthermore, PW10 Henry Kiptoo Sang, the government analyst testified that he received 15 items for analysis being; two (2) cotton wool swabs, piece of orange seat cover, brown and white curtain, pair of blue sandals, two (2) knives, a pair of jeans trouser, black under-pant, a pair of blue jeans short, red jacket with black and white strips, grey short with blue flowers, beige/greyish t-shirt, blood and nail samples of the deceased, and blood sample of the accused.
34. That he examined the items and established that, all the items except one knife with a plastic handle and the black under-pant were stained with blood of human origin. Further, the DNA test revealed that, the two cotton wool swabs, the orange seat cover, the curtain, the pair of sandals, the knife with



a wooden handle, the pair of jeans trouser, the blue jeans short, and the red jacket were stained with blood belonging to the deceased.

35. Furthermore, the grey short with blue flowers, and the beige/greyish t-shirt were stained with blood from both the deceased and the accused.
36. The afore forensic evidence places the accused squarely in the commission of the offence. Indeed the accused confirmed he was with the deceased in their home and that a “confrontation” occurred and he was injured. However, he does not testify as to what became of the deceased after the alleged confrontation. Therefore, it can be safely concluded from the afore evidence that the deceased met her death in the hands of the accused and/or the accused killed the deceased.
37. The last question to consider is whether the accused had malice aforethought. The circumstances under which malice aforethought will be deemed are tabulated under section 206 of Penal Code 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;
- 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.”

38. Furthermore malice aforethought has been considered in several cases. The Court of Appeal in *Odio v Republic* [2024] KECA 1544 (KLR) stated that: -

“20. Malice aforethought may be express or implied. Express malice aforethought refers to when a deliberate intention is manifested to take away the life of a person unlawfully. Implied malice aforethought applies when no considerable provocation appears or when the circumstances attending the killing show a reckless and wicked heart. To be convicted of murder, malice aforethought must be proved. Malice aforethought cannot be imputed to an accused person based solely on their participation in a crime. If it is shown that the killing resulted from an intentional act with express or implied malice aforethought, no other mental state need be shown to establish malice aforethought. In *Nzuki vs. Republic* [1993] eKLR, this Court defined malice aforethought as: ...a term of art and is either an express intention to kill, as could be inferred when a person threatens another and proceeds to produce a lethal weapon and uses it on his victim; or implied, where, by a voluntary act, a person intended to cause grievous bodily harm to his victim and the victim died as the result. See the case of *Regina v Vickers*, [1957] 2 QB 664 at page 670. An intention connotes a state of affairs which the person intending does more than merely



contemplate: it connotes a state of affairs which, on the contrary, he decides, so far as in him lies, to bring about, and which, in point of possibility, he has a reasonable prospect of being able to bring about, by his own act of volition. See the case of *Conliffe v Goodman*, [1950] 2 KB 237.”

39. Furthermore, in the case of; *Tubere s/o Ochen* {1945} 12 EACA 63 the court (COA?) stated that in considering whether there was malice aforethought, the court will look out for characteristics such as; the nature of the weapons used, the manner it was used to inflict the injuries, the parts of the body targeted whether vulnerable or not, the nature and gravity of the injuries, and the conduct of the accused before, during and after the incident. (See also *Dafasi-Magayi v Uganda* {1965} 1 EA 667).
40. In the instant matter although there is no direct evidence that, the accused had malice aforethought to kill the deceased but there is a circumstantial evidence that infers the same. First and foremost, it is in evidence from the accused’s parents PW7 and PW8, that when they arrived at home on the material date, the accused did not tell them anything about the alleged “confrontation” with the deceased and/or her demise. In fact according to the accused’s mother PW7, she even sent him to buy potatoes and he returned with potatoes and a change of Kshs 25 from the deceased’s father. The mother cooked and served the accused and the father and they ate and slept. The question that arises is does this conduct resonate with a person who has been involved in an incident of the magnitude of the case herein?
41. Furthermore, the accused’s father PW8 Martin Akai Eregai testified that, he did not see anything peculiar on the accused when he went home on date of the offence. That when his wife told him the following day that, the accused had confessed to the offence, he got confused. He further stated that the accused “always looked and was angered” and that since 2019 he kept to himself and was “quickly angered and very temperamental” and he thought it was “adolescence” stage.
42. In addition, it is in evidence of (PW9) Dr. Ngulungu that, while performing post mortem that he noticed a total of twelve (12) stab wounds on front of deceased’s head and neck, measuring 16-20mm x 10 x 5mm and seven (7) stab wounds on the back measuring 30 x 10mm and 10 x 6mm. That, the blood stains indicated the stab wounds were inflicted when the victim was alive. Furthermore there were bruises and abrasions on the face and a fracture on the skull on the left side around the eye. The questions that arises is; were all these stab wounds accidentally inflicted? Were they self inflicting? Did the person who inflicted them intend to spare the life of the victim?
43. In my considered opinion the intention to kill was formed at the time of the offence. The many stab wounds inflicted on the victim corroborates the evidence of PW4 Mbugua that the accused told the police at the time of arrest that, when the victim overpowered him in his sexual advances, he took a knife and stabbed her on the back and that when he realized that the deceased was unconscious he stabbed her on the face, chest and back.
44. Furthermore, the manner in which the accused dragged and disposed of the deceased’s body and/or concealed evidence of death by putting the deceased’s clothes in the pit latrine negates lack of malice aforethought. The circumstances of aforethought under section 206 referred to herein are framed broadly.
45. The subject provisions states that the knowledge that the act or omission causing death will probably cause the death, is evidence of malice aforethought. The accused continuously stabbed the deceased with full knowledge that his action will cause death and he caused her death. Consequently, all the afore evidence lead to inference of malice aforethought and I do return finding that, the accused had malice aforethought.



46. In the given circumstances his defence of provocation by the victim holds no water as both PW1 and PW5, the deceased's cousin and mother respectively, who were close to the deceased clearly stated that the deceased was quite free with them and never told them of a love relationship between her and the accused.
47. However, even if the accused were to be given the benefit of doubt, where is proof that the deceased sent him an offensive message. Even then would such a message if at all was sent justify the death of the deceased
48. All in all I find that the prosecution has proved its case beyond reasonable doubt and I find the accused guilty as charged and convict him accordingly
49. It is so ordered

DATED, DELIVERED AND SIGNED ON THIS 27TH DAY OF JANUARY 2025

GRACE L. NZIOKA

JUDGE

In the presence of:-

Ms. Chepkonga for the State

Mr. Bogongo for the accused

Mr. Mwaisinga for the victim's family

Mr. Komen: court assistant

