



REPUBLIC OF KENYA



**Republic v Njoroge (Criminal Case 31 of 2023)
[2024] KEHC 489 (KLR) (25 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 489 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDAMA RAVINE
CRIMINAL CASE 31 OF 2023
RB NGETICH, J
JANUARY 25, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOSHUA KARANJA NJOROGE ACCUSED

JUDGMENT

1. The accused Joshua Karanja Njoroge has been charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). The particulars of the offence being that the accused on the 3rd December, 2014, at Kiremo village Timboroa Location, Koibatek Sub- County in Baringo county, murdered Tumaini Kwamboka Rebeka.
2. The accused denied the charge and the matter was set down for full trial with the prosecution calling ten (10) witnesses to prove the charge.

Prosecution Evidence

3. PW1 one Richard Kiptoo Maiyo testified that on 3rd December, 2014 at 5.30 p.m, he was at Rai Ply when he saw Karanja and Tumaini quarrelling and Karanja had a shining sharp object. He later saw Tumaini the deceased herein fall down to the ground. He said he saw Karanja struggling with Tumaini while holding the shining object. He rushed to the scene and found Tumaini with injuries on the stomach, chest and neck but was still alive but stomach had intestines oozing out.
4. Pw1 further stated that after assaulting the deceased, Karanja ran away from the scene. He chased him together with other people but he run into the forest and they were not able to catch up with him. They went back to the scene and found the deceased had been taken to Timboroa Hospital where he later died.



5. Pw2 one Patrick Onyicho Ndemo testified that on 3rd December, 2014, at about 5.30 P.m. he was at home when he heard noises and on going out to check what was happening, he found a large crowd of people crying and on moving closer, he saw the deceased herein lying on the ground with her intestines out and had difficulties breathing. He confirmed that she had injuries on the stomach, ribs and neck. They took her to Timboroa Health Centre where she was referred to Mercy Hospital at Eldama Ravine where she later died.
6. Pw 3 one Lilian Moraa Labera the deceased's mother was too emotional to testify. She was stood down to another date when she testified that on 3rd December, 2014 at about 5:30 pm, she was selling potatoes at Raiply area along Eldoret - Nakuru road when she heard people scream. She rushed to the scene of the incident and found her child Tumaini Kwamboka down with stab wounds on the neck and stomach and the intestines were protruding. She reported the matter at Timboroa Police Station and went back home and while at home, her daughter's sweater and lessos were taken to her and was told her daughter Tumaini had passed on and that it is Joshua Karanja the accused herein who stabbed her.
7. PW 4 one Florence Mokeira James stated that the deceased was a neighbor and that the deceased and accused were friend. She said on 3rd December, 2014, at 5.00 p.m., she heard screams and on responding to the screams, she met Joshua Karanja was coming from Raiply tree nursery running towards the Timboroa forest. She greeted him and he respond as he run. On pw4 asking him where the screams were emanating from, he told her the women at Raiply were screaming and said a house could be on fire. She asked accused to join him go and see what was happening but the accused run towards a separate direction through the forest.
8. Pw4 said she found the deceased lying on the side of the main road. That she was injured on the neck, stomach and ribs and the intestines were oozing from the stomach. She stated that People got a vehicle and she was taken to hospital at Timboroa and that she did not go with the deceased to the hospital; and at 8.00 p.m on the said day, they got a report from a neighbour who had taken her to hospital that she had died.
9. Pw5 one Nicholas Rabera who is the deceased's father testified that one evening at about 5.00 p.m. he asked his daughter whom he was with and she told him that it was the teacher's son, Karanja. He further stated that on 3rd December, 2014 at about 6.00 p.m, he was at Equator when he received a call from his wife that his daughter Tumaini had been stabbed. He went to Timboroa hospital where he found that she had already been taken to Mercy Hospital at Eldama Ravine. On reaching Mercy Hospital, he found that she had died. He said he learnt from his wife that it was Karanja, the accused herein who had stabbed the deceased. He later went to identify the body to the doctor for post mortem.
10. PW6 one No.91238 PC Juma Magoiga Mbusiro who was working at Timboroa police station testified that on 7th December, 2014, he was instructed by Acting OCS Inspector Adika who is the investigating officer in this matter, to accompany him and his fellow colleagues to a scene where the accused person voluntarily took them to Kipkurere forest where he had placed a knife suspected to have been used to commit a murder.
11. The witness proceeded to testify that when they reached some point in the forest, the accused showed them where he had left the knife and at the same time told them that he had spent the night at the place. That he showed that particular place where he had buried the knife under the soil. They recovered the knife which had a dress handle. The knife was handed over to the investigating officer at the scene.
12. PW7 one No.78985 PC Kibet Cheruiyot testified that on 6th December, 2014 at 1830 hours, he was at the report office at Lesos police station when the accused surrendered himself at the police station for



- murder of one lady namely Tumaini Cheruiyot. He placed the suspect in custody and shortly, OCS Timboroa sent his team to collect the suspect.
13. PW8 one Doctor Asava Ochola testified that he performed post mortem on the body of the deceased Tumaini Rabera on 9th December, 2014 at Mercy Mission Hospital at 12.03 p.m. His conclusion was that the cause of death was cardio respiratory failure secondary to excessive blood loss from lacerated mesenteric vessels and compromised ventilation from a punctured lung and hemothorax after multiple stab wounds.
 14. PW9 No.234734 Chief Inspector Emily Adika testified that on 3rd December, 2014, she was still serving at Timboroa police station where she worked as Acting OCS when a lady reported that her daughter had been stabbed by a person who was known to her as Joshua Karanja. She instructed an officer on patrol one Sgt. James Chapia to proceed to the scene at Kirima village, near Raiply Tree Nursery, along Nakuru-Eldoret Highway and upon arrival at the scene, the sergeant informed her that the lady had been taken to Timboroa health centre and when they went to Timboroa Health centre, they learnt that she had been referred to Eldama Ravine. On reaching Eldama Ravine, they were informed that the lady had passed died on arrival.
 15. She further stated that on the evening of 6th December, 2014 at around 6.30 p.m, she was informed by his colleague Chief Inspector Musa Kandie that a suspect by the name Joshua Karanja had surrendered himself at the police station and informed him that he was being sought by police from Timboroa concerning a murder case. She said together with other officers, they left Timboroa for Lessos police station where Joshua Karanja was handed over to them and they took him to Timboroa police where he was booked and placed in cells.
 16. She testified that on 7th December, 2014 at around 08.00 hours, the accused voluntarily informed them that he was ready to show them where he had hidden the murder weapon. She said the accused led them to Timboroa forest about 10km inside the forest from the highway where he showed them where he had buried the knife in the soil and removed it. Pw9 further testified that on 9th December, 201, she accompanied Sgt. Chapia to go and visit the scene. They took photographs of dry blood on the ground.
 17. PW10 one Chief Inspector John Songa, service Number 23524, testified that on 15th December, 2014, he received 9 photographs from Cpl. Jomo Chapia of Timboroa police station who informed him that he had taken the photographs of one Tumaini Kwamboka Rabela at Mercy Mission Hospital on 9th December, 2014 which he certified for use as photograph evidence in court. He produced the (9) photographs in court as exhibits and a certificate that he prepared to that effect.
 18. Pw11 one no. 81795 PC Samson Muga testified that on 29th December, 2020, he took over investigations from CPL Jomo Chapia who retired from service and they were unable to reach him. He said an exhibit a knife was also handed over to him. He produced it in court as exhibit. He said at the time the file was handed over to him, it was part heard before court and he bonded the remaining witnesses.
 19. Upon the closure of the prosecution's case, the court found that a prima facie case had been established by the prosecution to warrant accused be placed on his defence.

Defence Case

20. On his defence, the accused gave a sworn statement and stated that on the 3rd December, 2014, at 5pm, he was from Matharu centre heading home when he met a person who told "hii Timboroa yenu ni kama imejaa mashetani" meaning "this Timboroa of yours is full of satans". He said he asked the



- person why and he responded that he had met a girl who had been stabbed severally. He said on further questioning him, he said it is Eric's son who had stabbed him and the victim had been taken to hospital.
21. He further stated that he was told the victim had been taken to hospital and people were going to the home of the person who had stabbed her. He said after knowing that the village were going to his home, he went back to Matharu and talked to Charles Mwaniki the owner of the video shop who advised him to surrender to police station. He said he called his mother who informed him that there were people looking for him and he went to Lessos police on 3rd December, 2014 where he surrendered himself in at Lessos police station on 6th December, 2014 because his name had been reported at Timboroa police station and they were looking for him.
 22. He confirmed that he was picked by police officers from Timboroa at about 8P.M and was booked in at Timboroa police station as a murder suspect and he spent the night at Timboroa. He said that on 7th December,2014, two police officer's Sgt. Mogire and P.C Juma went to tell him that this time round, they cannot afford to lose a case. He said they told him that they knew it was him though they had no evidence but they cannot afford to lose another case.
 23. He further testified that at 8 a.m, he was called out at the cell and IP Emily Auma Adika acting as OCS told him to get into a land cruiser and he was taken to Kipkurere Forest about 7Km away from the station and that at some point, he was ordered outside the car and that they had informed him that they were going to recover the murder weapon. He stated that there were children around and P.C Juma removed a knife wrapped which is the knife that was before the court. He further stated that Madam Inspector told him that they have no evidence but they know it is him.
 24. He said the officers told him to accept that he had given them the knife and asked him to give confession statement that he had killed his girlfriend so that they can drop the charges but he refused and he was informed that they were now headed to police station so that he could record the confession. He said at the police station, the OCS told him that he was to record a confession. He requested to be accompanied by a relative and called his uncle Samuel Maina Waweru who went with Maina to Eldama Ravine Police station. He said the OCS was not there and they went back to Makutano Police station where he recorded his statement under inquiry before Corporal Ibrahim Omar OCS Makutano police station. He said he narrated what happened. He said it the police officers who had the knife alleged to have been recovered and it was not recovered.
 25. The accused said because the deceased was his girlfriend, he called for the mother of the deceased and spoke to her on the 8th December,2014. He said the mother said she did not know the person who told her it is him/accused who killed her daughter but she insisted that it is the accused who killed her as he was with her.
 26. The accused testified that Pw4 who testified that she met accused leaving the scene on the 3rd December, 2014 never went to the police station to report but went to the station on 8th December,2014 a period of 5 days after the incident. The accused testified that there was no way he could have killed the deceased who was his girlfriend from the year 2011.
 27. Both the prosecution and defence opted not to file written submissions. They relied on evidence adduced in court.

Analysis And Determination

28. The ingredients for the offence of murder are as hereunder:-
 - a. proof of death, the cause of that death,



- b. proof that the death was due to an unlawful act or omission and that the unlawful act or omission was on the part of the suspect and
 - c. that the unlawful killing was with malice aforethought.
29. There is no dispute that the victim died. Evidence adduced to the effect that the deceased died night of the 3rd December, 2014 was confirmed by post mortem done on the 5th January, 2018 at Baringo County Hospital mortuary by Doctor Asava Ochola. He produced post mortem report in court as exhibit. His opinion was that the cause of death was acute head injury due to sharp force trauma following assault.
30. What remain for court's determination is whether prosecution proved the 2nd and 3rd ingredient.

i. Whether it is the accused who caused the death of the deceased and if it is to the affirmative, whether, he had malice aforethought

31. It is not disputed that the accused and the deceased knew each other. The accused confirmed that the deceased was her girlfriend and they had known each other from young age. In his testimony, pw1 testified that on 3rd December, 2014 at 5.30 p.m., he was about 100 meters from the scene when he saw accused and the deceased quarrelling. He said he saw accused hold a shiny object and the deceased fall to the ground after a struggle with the accused. He rushed to the scene and found the deceased with injuries on the stomach, chest and neck. Pw4's evidence to the effect that he met the accused from the scene as he rushed to the scene after hearing screams collaborates evidence of placing the accused at the scene. She said she asked accused to go with her back to the scene but instead he run into the forest. The question that arises is, if the accused was not involved, there would not have been a reason for him to run away from where people were going to in response to screams; and the fact that it was his girlfriend of many years injured at the scene raises more questions as to why he was running away from screams instead of rushing to the scene to help together with other people.
32. Further to the above, the fact that the accused led police to the forest where the murder weapon was recovered buried in soil as stated by pw6 and pw9 rules out any doubt as who inflicted injuries on the deceased. Further, if the accused was not involved in deceased's death the question that arise is, why would he surrender himself to police at Lesos police station as stated by pw7. From the foregoing, there is no doubt that it is the accused who caused injuries leading to death of the deceased.

ii) Whether prosecution proved malice aforethought against the accused.

33. The next issue for determination is whether the accused had malice aforethought. Section 206 of the [Penal Code](#) provides that 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.



34. The section provides for circumstances which constitute malice aforethought. The offence of murder is committed when one unlawfully causes the death of another by an unlawful act or omission with malice aforethought. The prosecution must prove that when the accused assaulted the deceased, he had formed the necessary motive to cause death of grievous harm to the deceased.
35. In my view the accused's behavior immediately after the offence points at his guilt. He run away from the scene immediately after the offence and hid the murder weapon. From the postmortem report, the deceased sustained serious injuries and the injuries inflicted have no semblance of being inflicted accidentally.
36. Final Orders
 1. Accused is convicted of the offence of murder contrary to section 203 as read with section 204 of the *penal code* (CAP 63 LOK).
 2. Right of appeal 14 days.

JUDGMENT DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 25TH DAY OF JANUARY 2024.

RACHEL NGETICH

JUDGE

In the presence of*:

Elvis - Court Assistant.

Ms. Ratemo - Counsel for state.

Accused present.

