



**Republic v Ngoru alias Mercy Muthoni Njuki (Criminal Case  
E010 of 2022) [2024] KEHC 1877 (KLR) (28 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1877 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
CRIMINAL CASE E010 OF 2022  
LM NJUGUNA, J  
FEBRUARY 28, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**MERCY MUTHONI NGORU ALIAS MERCY MUTHONI NJUKI ..... ACCUSED**

**JUDGMENT**

1. The accused person was charged with murder contrary to Section 203 as read together with Section 204 of the *Penal Code*. The particulars of the offence are that on 31<sup>st</sup> July 2022, at Mbukoli village in Embu West Sub-county within Embu County, the accused murdered Emilio Njuki Ruthi. Upon arraignment, she pleaded not guilty and a plea of not guilty was duly entered before the matter proceeded to full hearing. The prosecution called witnesses in support of its case.
2. PW1 was CM, a minor and daughter of the accused, who stated that on the day of the incident, she was at home with her mother, her deceased father and her brother. That the deceased began a fight with the accused in the kitchen and they fought until the deceased fell on fire and was burned on his face and abdomen area. That a man went and took the deceased to hospital as the accused stayed at home. That she saw some other people at the scene but she did not know their names. On cross-examination, she stated that the deceased used to drink alcohol and that her brother and the accused saw the deceased falling on the fire. She denied that she was coached to testify.
3. PW2, Bernard Murimi Mvurya stated that he was drinking at Kanini Kega Club when PW1 ran into the establishment saying that the accused had killed the deceased. That he ran to the home of the accused and found the deceased lying on a firewood jiko and he had sustained burns on his head and chest. That when they arrived at the home of the deceased, the accused was drunk and was holding a stick. That he called some people who took the deceased to hospital but he did not accompany them. That he was informed that the deceased had died the following day but he did not know the cause of death. On cross-examination, he stated that before PW1 ran into the club, he had heard noises from



- outside but since he was not bothered, he did nothing about it. That by the time PW1 ran into the club, he had been drinking but was not drunk. That when he went to the house of the accused, he found the deceased lying on the firewood jiko with burns on his head and chest and he was also bleeding from the ears, while the accused was just sitting there.
4. PW3, Lawrence Nyaga Ruthaira, brother of the deceased stated that on the material day, he was on the way to his farm when he found the deceased and other people splitting timber. That he left them doing their work and went to get fodder for his cattle. That on his way back, he saw the accused and another person carrying the timber to a neighbor's house and he did not talk to them. That he and the deceased went to a bar and were drinking alcohol when the deceased told them that he wanted to go home at around 6PM. That at around 7:30PM, his wife went to the bar and informed him that the accused was killing the deceased. It was his testimony that they rushed to the home of the deceased where they found the deceased lying on the ground outside bleeding from the ears and mouth and the accused was inside the house.
  5. That when the accused was asked what she had done, she responded saying "*wacha akufe*". It was his testimony that they looked for a vehicle and took the deceased to Nembure Police Station where they were given a letter to seek treatment at Embu Level 5 Hospital. That they proceeded to the said hospital but in the process of admission, the deceased died. He stated that the following day, him and his brother together with the chief and police officers went to the home of the deceased where the accused was arrested. That they went to the mortuary at Embu Level 5 Hospital where he identified the body of the deceased for purposes of postmortem. That the deceased had burns on his chest. He stated that the accused and the deceased were both drunkards and they quarreled a lot but they were okay with each other. On cross-examination, he stated that he could not tell how drunk the accused was and he did not ask her if she killed the deceased.
  6. PW4, Michael Muriithi, the son of PW3 stated that on 03<sup>rd</sup> August 2022, he was at his home in Embu when he received a phonecall from the police requesting him to visit Embu Level 5 Hospital mortuary to identify the body of the deceased. That he went and identified the body of the deceased in the company of his father and the son of the deceased. That a postmortem was carried out and he observed that the deceased had burns on his chest, his head was swollen and there was blood on his ears.
  7. PW5, Dr. Rosemary Kamau, a pathologist at Embu Level 5 Hospital stated that she conducted a postmortem on the body of the deceased. She observed that he deceased had a foot deformity and some old injuries. That the body of the deceased had a 2cm bruise on the forehead, a superficial laceration on the left maxillial region and there was a first degree burn on the left chest wall which was 3cm×3cm. That there was a closed left fracture on the femur, bruising on the left chest wall, multiple depressed, displaced skull fracture with fragmentation, left subdural hematoma with mass effect and left parietal occipital brain contusion. She formed the opinion that the cause of death was craniocerebral injury due to blunt force trauma.
  8. PW6, Sergeant Douglas Kiriungi formerly of Nembure Police Station stated that on the day of the incident, he was called by the Chief Inspector who requested his company to visit a crime scene at Bukori Shopping Center. That the matter was reported by the assistant chief and the chief through the OCS. That when they reached the house where the incident occurred, they found the accused and her child who told them that the deceased went home while drunk and that he slid and fell, hitting his head. That the deceased was taken to hospital and died while undergoing treatment. That the DCI officers took over the investigations and according to them, the deceased and the accused were involved in a scuffle, leading to the accused hitting the deceased with a wooden stick on the head. That the piece of wood that was allegedly used to hit the deceased and the stone which he is said to have fallen on, were taken as evidence and the accused was arrested as a suspect.



9. PW7, Cpl. Robert Kariuki, the investigating officer in the case, stated that at the time of the incident, he was working at the DCIO's office in Embu. That he received a call about the incident and he visited the scene where he found PW6 and Chief Inspector Stanley. That he observed that there was a firewood kitchen with a fireplace. That the daughter of the accused told them that the deceased landed on the fireplace stone after he was hit with a piece of wood by the accused. That the piece of wood which was used to hit the deceased had blood on it and it was collected as evidence. That when the accused was interviewed, she said that the deceased fell by himself although her daughter said that the accused and the deceased fought frequently.
10. He stated that the accused was arrested as a suspect and then the officers proceeded to Embu Level 5 Hospital Mortuary to view the body of the deceased. That samples were taken from the piece of wood and sent to the government chemist for analysis. On cross-examination, he stated that he relied heavily on the version of the story given by the daughter of the deceased who said that she saw the accused hitting the deceased with a stick. That the piece of wood collected matched the description of the stick as given by the daughter of the accused, and in his view, the stick possibly had blood stains. That later, the government analyst said that the stick did not have any blood stains. That he did not investigate whether the deceased could have fallen due to his foot deformity. According to him, the murder weapon was a charred piece of wood.
11. He also stated that the accused was taken to Embu Level 5 Hospital for mental assessment and according to the report by Dr. Sheila Shavulimo, the accused was found mentally fit to stand trial. That according to the government chemist, no blood stains were found on the alleged murder weapon. He produced the mental assessment report and the government chemist report as evidence.
12. PW8, Inspector Henry Kiboma stated that he accompanied the investigating team to the scene of crime on the day of the incident. That he took photographs of the scene, which he produced as evidence, together with the certificate of photographic evidence.
13. The prosecution closed its case and the court found that the accused had a case to answer. The accused person was placed on her defense.
14. DW1, the accused person, stated that the deceased was her husband and together, they had 3 children. That on the day of the incident, she was in the kitchen with 2 of her children and she was cooking. That sometime between 7:30PM and 8PM, the deceased went into the kitchen and he was drunk. That he was so drunk and unstable that he couldn't stand on his own without support. That he went and stood near one of the three cooking stones and then he fell down and hit his head on the stone that was near the door and onto the fire. That PW2 is the one who went and lifted the deceased out of the fire and placed him outside. That PW2 called the brothers of the deceased and they took him to hospital but the accused person did not accompany them. That the following morning, she went to the home of PW3 to ask which hospital the deceased had been taken to, but she did not find him at his home.
15. That PW2 asked her to go and report the matter to the police station but on their way, they were informed that the police had arrived at her home and so they returned. That she told the police her version of the story and she was taken to the police station together with her children as she couldn't leave them alone at home. On cross-examination, she stated that the deceased was drunk but she had also taken alcohol that morning. That the deceased did not slide, he just fell. That before that day, the deceased was not drinking much following doctor's orders. That a few days prior to the incident, the deceased had been drunk and had fallen on the road and she had been called to pick him up. She denied having hit the deceased with a stick.
16. Both parties stated that they did not wish to file submissions.



17. The issue for determination is whether the offence of murder has been proved beyond reasonable doubt.
18. Article 26 of the *Constitution* of Kenya provides that a person shall not be deprived of life intentionally, except to the extent authorized by the *Constitution* or written law. The accused person herein faces the charge of murder under section 203 as read together with 204 of the *Penal Code*. The prosecution bears the burden of proving beyond reasonable doubt, that the accused murdered the deceased. These provisions of the Penal Code provide the elements of the offence as follows:
- “203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”
19. The elements to be proved herein are the following:
- a) The fact and cause of death of the deceased.
  - b) That the said death was caused by unlawful act of omission or commission on the part of the accused person.
  - c) That the said act of omission or commission was with malice aforethought as defined in Section 206 of the *Penal Code*.
- (See also the cases of *Republic v W.O.O.* [2020] eKLR (Migori High Court Criminal Appeal No. 26 of 2017) and *Anthony Ndegwa Ngari v Republic* [2014] eKLR)
20. The cause of death is established as documented by PW5 in the postmortem report. According to PW5, the deceased suffered the injuries as detailed in the postmortem report. She formed the opinion that the cause of death was craniocerebral injury due to blunt force trauma. On the issue of the unlawful act or omission that caused the death of the deceased, PW1 stated that the deceased went to the kitchen and began a fight with the accused. That in the process of fighting, the deceased fell on the fire and was burned on his abdomen area.
21. PW2 narrated that after being alerted of the incident, he went to the house of the deceased and found him lying on the fireplace with injuries on his head and burns on his chest. That he arranged to take the deceased to hospital. PW2 stated that he found the deceased lying on the fireplace while the accused was sitting there, seemingly watching the deceased burning. PW1 stated that the accused and the deceased were involved in a fight, which she witnessed. PW7 stated that he identified the alleged murder weapon through the testimony of PW1.
22. In my view, the fact that the alleged murder weapon did not contain any blood stains does not in itself exonerate the accused of the offence. It is clear that she was fighting with the deceased before he died. The cause of death is not the burns sustained but blunt force trauma which in my view was inflicted during the fighting as testified by PW1 who told the court that the accused fought before the deceased fell on fire. PW1 would not have a reason to incriminate her own mother. PW3 also testified that the fights between the accused and the deceased were frequent. In my view, the prosecution has proved beyond reasonable doubt that the accused murdered the deceased.
23. PW3 stated that he was informed of the incident by his wife and when he arrived at the scene, he found the deceased lying outside his house bleeding from his ears and mouth. That when he asked the accused about the incident, she said “wacha akufe”. On the element of malice aforethought, the same is provided for under section 206 of the *Penal Code*. It can be inferred from different points within a case,



for instance, the words or behavior of the accused before, during or after the crime and the weapons used, among others. In the case of *Republic v Stephen Sila Wambua Matheka* [2017] eKLR it was held;

“The courts in interpreting the provisions of section 206 have stated as such in various authorities. In the classic case of *Republic v Tubere S/O Ochen* [1945] 12 EACA 63 the court held that an inference of malice aforethought can be established by considering the nature of the weapon used, the part of the body targeted, the manner in which the weapon was used and the conduct of the accused before, during and after the attack. In the *Ogelo v Republic* [2004] 2KLR 14 the appellant in this case chased the deceased and another. He caught up with the deceased and stabbed him with a knife on the chest. The deceased died of the stab wounds. The court held inter alia that by dint of section 206 (1) an intention to cause death or grievous harm malice aforethought is deemed to have been established by evidence presented by the prosecution. Malice aforethought can also be inferred from the manner of killing. See the case of *Ernest Bwire Abanga Onyango v Republic* [1990] Cr. Appeal No. 32 of 1990. The principle here as enunciated under section 206 and the authorities is the fact of establishing by evidence that the accused conceived the criminal mind before converting that in the mind into acts of omission to commit the murder.

24. In the present case, PW3 testified that when the accused was asked about the incident, she said “*wacha akufe*” (let him die), referring to the deceased. PW1 also testified that the accused and the deceased were involved in a fight with each other on the day of the incident. PW2 stated that when PW1 informed her of the ordeal, he rushed to the home of the deceased and he found the deceased lying on the fireplace burning and the accused sitting in the same kitchen, unbothered with what was happening to the deceased. That he is the one who removed the deceased from the fireplace and arranged for this transportation to a hospital. He also stated that prior to this incident, the accused and the deceased fought habitually. In my view, the conduct of the accused before, during and after the incident on that day shows that the accused indeed had malice aforethought.
25. In the end, I find that the prosecution has proved the offence of murder against the accused person, beyond reasonable doubt and I hereby convict her accordingly.
26. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 28<sup>TH</sup> DAY OF FEBRUARY, 2024.**

**L. NJUGUNA**

**JUDGE**

.....for the State

.....for the Accused Person

