



REPUBLIC OF KENYA



**Republic v Mahindu (Criminal Case 8 of 2014)
[2024] KEHC 1544 (KLR) (22 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1544 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL CASE 8 OF 2014**

M MUYA, J

FEBRUARY 22, 2024

BETWEEN

REPUBLIC PROSECUTOR

AND

JOSEPH KIRUNGU MAHINDU ACCUSED

JUDGMENT

1. Joseph Kiringu Mahindu herein after referred to as 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 are that on the night of 2nd March 2014, at Wahuri village, Muhoya Location within Nyeri County he murdered Francis Ndegwa Ndunyu.
3. This matter was parheard before Hon. Mshila J. up to the close of prosecution case. I took over and proceeded with the defence.
4. The prosecution called six witnesses. The accused opted to give a Sworn Statement on his defence and called no witness.
5. PW1 Samuel Ndungu Nderitu testified that on the 2nd day of March 2014 at about 7:00pm he was heading home from Ihururu Town when he was called on phone by one Wangeci who informed him to get some means of transport and proceed to the home of the deceased.
6. Upon arrival he found the deceased and the accused holding each other. The deceased was on the floor. They got hold of the accused. The daughters of the accused arrived and went in search of their father. He was found seated on the bed with his arms down. Upon inquiring from him as to what happened, he said that it was his in law who had done that to him. He was bleeding from the head.
7. Arrangements were made and the deceased was taken for medication. Later they received information that he had passed on.



8. Isaac Wahome Kimburi (PW2) testified to have been called by one Kiringu at about 2:00pm who told him that he wanted him to discuss some issues. They met at around 7:00pm he appeared drunk. He said he wanted to be taken to his father-in-law's homestead which he did and left.
9. Later, he was called by one Harun who told him that there was fracas at the deceased's place. He proceeded there, upon arrival there he found one James Ndungu who told him that the deceased was injured.
10. The accused was at the scene and was bleeding from injuries he had also sustained. They checked for the deceased whom they found inside the house with injuries on the head.
11. Transport was arranged for both the accused and the deceased and both were taken to Hospital. Later on 9th March 2014 he received information that the victim had passed on.
12. PW3 Zachary Gitonga was informed that there was a commotion at the home of the Deceased. He proceeded there and found the deceased lying on the bed. He had injuries on the head. He said that he had a fight with the accused. The accused was his son-in-law. The accused was at the gate of the homestead. He also appeared injured. They called for transport and both were taken to Hospital.
13. Dr. Okoth (PW4) performed post mortem examination on the body of the deceased. It had small abrasions on the lower limb, multiple abrasions on the right upper limb and shoulder. Abrasions on the face. Haemorrhage on the chest wall, multiple fractural from No. 3 – 9th rib. There was haemorrhage and lung collapse. Hemorrhage and contusions on public area.
14. He formed the opinion that cause of death was as a result of multiple injuries from blunt Trauma mainly on head and chest.
15. In his defence, the accused testified that he is married to the daughter of the deceased who was a friend of his and who was staying alone. On the fateful day (the 2nd day of March 2014) the deceased called him and told him that he should not return to Nairobi before seeing him.
16. At around 5:00pm he went to visit him as arranged and found him with a lady. She wanted to know why he had paid them a visit. The deceased emerged from the house while armed with an iron bar and hit the accused on the head and he fell down unconscious. Later he decided to go back home. On the way he met Isaac Kiburi (PW2) his wife and her sister. He narrated to them of what had taken place. They arranged for transport and both of them were taken to hospital. The matter was reported at APS Camp Ihururu. Two weeks later while in Nairobi he was informed that police wanted him. Upon arrival in Nyeri, he was arrested and later charged with this offence. He told the court that he did not know how the deceased received injuries.

Determination.

17. The accused is charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
18. Section 203 of the [Penal Code](#) provides:-

“ Any person who of malice aforethought causes death of another person by unlawful act or omission is guilty of murder.”
19. Section 206 of the [Penal Code](#) defines malice aforethought in the following manner:-



- a). An intention to cause death of or to do grievous harm to any person whether the person killed is the one or not.
 - b). Knowledge that the act or omission causing death will probably cause the death of or grievous harm to the person whether that person is the person 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.
 - e).
20. In this case it is not in dispute that the accused was a son in-law of the deceased.
21. The prosecution witnesses (PW1 and PW2) who knew both of them testified that they were friends.
22. A perusal of the evidence adduced does not produce any reasons why the accused may have wanted to kill leave alone assault the deceased.
23. The deceased used to stay alone in his home compound and the investigation officer does not appear to have found an eye witness. The Investigating Officer decried lack of interest on the part of several bonded witnesses to testify including the Officers to whom the report was made. According to the evidence of the investigating officer the deceased and the accused fought on the 2nd day of March 2014. The deceased and the accused were both taken to hospital the same night. The deceased succumbed to the injuries on 9th March 2014.
24. If there was a fight as suggested by the Investigating Officer, tangible evidence of this fight is scarce apart from the injuries. There is no evidence as to the reason for the fight. There is no evidence as to who started the fight. Whether there was provocation on the part of one of the fighters or not.
25. In a nutshell investigations in this case left a lot to be desired. This case was not proved beyond reasonable doubt. The accused is found not guilty for the offence of murder contrary to Section 203 of *Penal Code* and is acquitted accordingly in respect of that count.

JUDGMENT READ AND DELIVERED IN OPEN COURT THIS 22ND DAY OF FEBRUARY 2024.

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JUSTICE MARTIN MUYA

In the presence of:-

Njuguna Kimani for the Accused.

Kariuki for the State

Court assistant: Andrew

