



**Republic v Moulid (Criminal Case 06 of 2019)
[2024] KEHC 4311 (KLR) (26 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4311 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE 06 OF 2019**

**JN ONYIEGO, J
APRIL 26, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

ABDI HASSAN MOULID ACCUSED

JUDGMENT

1. The accused person herein was charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence are that on 29.03.2019 at around 1100hrs at Bulla Suthi village in Daadab Sub County within Garissa County he murdered one Isnino Ismail Abdullahi.
2. He pleaded not guilty to the charge and the prosecution called six (6) witnesses in its endeavour to establish a prima facie case against him. Upon being put on his defence, he elected to give unsworn testimony thus denying any involvement in the death of the victim.
3. During the hearing, PW1 Halima Sudi testified that on 29.05.2019 at 9.30a.m., together with Isinino the deceased herein, they were herding cattle in her shamba when a man approached them thus prompting them to run away. That the man got hold of the deceased in a manner suggesting that he wanted to rape her. Meanwhile, from her hide out, she saw the deceased struggle with the man. She testified that when the deceased was overpowered, she fell down consequences whereof the man accused herein drew a knife and hit her on the legs. She further stated that she saw the man stab the deceased although she could not see exactly the part of the body that was being stabbed.
4. It was her testimony that she ran back home to call her brother to assist Isnino. She identified the accused person as the man responsible for the death of the deceased. On cross examination, she stated that it was not true that the accused had complained that his goats had been stolen and further, the alleged lost goats were not part of the goats that she was herding at the material time.



5. PW2 Yusuf Sudi Maalim stated that on the material day while at home, the deceased and his sister, PW1 were grazing goats in the field when PW1 returned home screaming that his wife, the deceased herein was being killed. Together with his son, they rushed to the scene where they found the deceased lying down bleeding. That he saw the accused person fleeing from the scene while headed towards the direction of Ifo. It was his case that members of the public managed to get hold of him and attempted wanted to kill him but the police showed up in time thus rescuing him.
6. He proceeded to state that his son (pw3) took Isinino to the hospital but unfortunately, she died on the way. That subsequently, the family of the accused person approached his family for maslaha (Somalia traditional dispute resolution method). He identified the accused person as the person responsible for the death of the deceased. He stated that he saw the injuries suffered by his wife as she was stabbed on the; head near the ear, right shoulder, the stomach and on the right side of the neck. On cross examination, he denied the allegation that amongst his herd of goats, there was a strange goat therein.
7. PW3, Mahat Yussuf Sudi testified that on the fateful day, he heard noise coming from the shamba and upon rushing out with his father (pw2), he met with PW1 who told them that a man had attacked them and that his mother was no more. That together with his father, PW2, they made their way to the scene. Upon reaching the scene, PW2 told him to check on his mother as he chased the assailant. He stated that his mother was bleeding profusely from the mouth and together with the help of the villagers, they took her to Daadab hospital from where they were referred to Garissa General Hospital. It was his evidence that his mother passed away on their way to Garissa General Hospital and so, on their way back home, they reported the matter to the police.
8. PW4 Dr. Hassan Abdulman testified on behalf of Dr. Orwa. That at the time of examination, the body was normal but cold and the approximated time of death was less than 3 hours. On examination, it was revealed that there were two cut wounds which were stitched but blood stained. She suffered injuries on the right side of the mandible, multiple dental curvatures in the mouth and 3 linear bruises in the abdomen. It was his evidence that the cause of death was haemorrhagic shock secondary to mandibular fractures with possible damage to external carotid (right) and/or its branches.
9. PW5 Ramadhan Ali, a driver previously working at Daadab Refugee Camp stated that on 29.05.2019, he received a call from Dadaab hospital to pick a patient for delivery to Garissa hospital. That together with Dr. Rubia, they picked the said patient but unfortunately, she passed on while on transit to Garissa General Hospital. He further stated that as a result, the hospital administrator advised them to make a report at the police station. He proceeded to state that the deceased had stitches and blood on her face as a result of the cuts sustained. That he saw her while doing resuscitation.
10. PW6 No. 7514 Sgt Simon Kibet Ngeno, the investigating officer stated that on 29.5.2019 at 3.00pm, he was at Dadaab police station when the OCS CIP Barnabas Taru informed him of a murder case and thus directed him to take over the matter. That while there, an ambulance from Red Cross came carrying the body of a female known as Isinino. It was his evidence that the deceased had allegedly been stabbed by one Abdi Hassan, a suspect who was being held at Ifo police station. That they took the body to Dadaab Sub-County where post mortem was done after which the body was later released for burial. That he preferred the charges herein against the suspect. It was his case that he saw the body of the deceased as the same had injuries on the face, private parts and at the back.
11. On his defence, DW1, Abdi Hassan Maulid, a mason by trade testified that on the material day, he was at his place of work in a construction site till about 4.20 p.m. That at that time, he saw five probox vehicles coming from Daadab direction when one vehicle stopped near him. It was his evidence that a person from that car asked him where he was going yet he was under arrest for having killed someone.



- That the said people started beating him and he was only rescued when the police stepped in. He denied committing the offence and instead claimed that he was innocent.
12. The court directed parties to file their written submissions to which only the prosecution complied. Via submissions dated 14.02.2024, Mr. Kihara, the prosecution counsel submitted that the prosecution had proved salient elements of the offence. Reliance was placed on the case of *Anthony Ndegwa Ngari v Republic* [2014] eKLR to express the position that for the offence of murder to be proven, the elements to be proved are that; death occurred, the accused caused the said death and that he had malice aforethought. Learned counsel urged that indeed death occurred and that the same was proved vide the testimony of PW2, PW3 and PW4 who conducted post mortem on the body of the deceased hence the first limb was accordingly proved.
 13. On whether the said death was caused by the accused person, it was submitted that PW1 witnessed the accused person stab the deceased while PW2 saw the accused running away from the scene leading to a chase which led to the arrest of the accused by members of the public.
 14. On malice aforethought, it was contended that PW1 testified that she witnessed the accused person stab the deceased. In the same breadth, PW4 testified that upon performing post mortem on the body of the deceased, he formed the opinion that the deceased died from cardio-pulmonary arrest as a result of heavy blood loss due to deep stab wounds. The prosecution thus placed reliance on the case of *Nzuki v Republic* [1993] KLR 171 where it was held that malice aforethought in murder can be established by ascertaining the nature of weapon used and the manner in which it was done. This court was urged to find the accused person guilty of the offence herein.
 15. I have considered the evidence presented before this court by the prosecution and the defence. I have also considered the submissions on record. It is trite that in any criminal charge preferred against an accused person, the prosecution has a duty to prove the elements of the same to the required degree. [See section 107 of the *Evidence Act* Cap 80 of the Laws of Kenya]. It is trite that in a criminal case, the standard of proof is always that of proof beyond reasonable doubt. See *Miller v Minister of Pensions* [1947] 2 ALL ER 372 - 373].
 16. In the instant case, the accused person is facing a charge of murder contrary to section 203 of the *Penal Code* in which Murder is defined as, ‘when any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.
 17. The elements of murder and which the prosecution ought to prove are:
 - i. The death of the deceased;
 - ii. The death was accused by unlawful acts;
 - iii. That the accused committed the unlawful act which caused the death of the deceased; and
 - iv. That the accused had malice aforethought.[See *Anthony Ndegwa Ngari v Republic* [2014] eKLR].
 18. The question therefore is whether the prosecution tendered sufficient evidence to prove the above elements.
 19. As for the death of the deceased, it is not in doubt that the deceased herein died. PW1, PW2, PW3, PW5 and PW6 all testified that the deceased died and thereafter was buried on the same day in the evening. The testimonies of PW1, PW2, PW3, PW5 and PW6 were corroborated with PW4 who testified and produced a post mortem in respect of the deceased on the body of the deceased and formed the opinion that the cause of death was haemorrhagic shock secondary to mandibular fractures with



- possible damage to external carotid (right) and/or its branches. In view of the foregoing, the fact of death was proved. [See *Johnson Njue Peter v Republic* [2015] eKLR].
20. The next question is whether the death of the deceased was caused by an unlawful act or omission. Article 26 (1) of the *Constitution* guarantees every person the right to life. What this means is that every homicide is unlawful unless authorized by law or excusable under the law or under justifiable circumstances such as self-defence or defence to property. [See *Sharm Pal Singh v R* [1962] EA 13]. The post-mortem report prepared by PW4 revealed that the deceased's cause of death was as a result of haemorrhagic shock secondary to mandibular fractures with possible damage to external carotid (right) and/or its branches. It therefore follows that the death of the deceased herein was caused by an act which is not excusable or authorized by law and therefore, unlawful. [See *Republic v Boniface Isawa Makiol* [2016] eKLR].
 21. The next question is whether the accused person unlawfully caused the deceased's death. In this case, PW1 testified that on the fateful day, she in company of the deceased were grazing goats when the accused person attacked the deceased. That the man got hold of the deceased like he wanted to rape her wherein a struggle ensued. That the man overpowered the deceased and thereby stabbed her severally.
 22. Pw1's evidence was further corroborated by the testimony of pw2 and pw3 who found accused running away from the scene of the incident and upon chasing him, he was arrested by members of the public. Clearly, pw2 did not lose sight of the accused from the scene up to the point of arrest. Further, that the family of the accused person had approached his family for maslaha an offer he refused.
 23. In as much as the accused person denied killing the deceased herein, the direct evidence of PW1, PW2 and PW3 as corroborated with the evidence of PW4, directly placed the accused person at the scene of crime and as being responsible for the stab wounds which led to the death of the deceased. There was no proof of any bad blood between the deceased or her family and the accused. I do not find any reason to infer any suggestion that the case was a frame up. Accused's defence that he was arrested for what he did not do is not convincing. In my view, the accused's defence is to say the least a mere denial hence dismissed.
 24. Finally, on the question of whether there was malice aforethought on the part of the accused person as defined under Section 206 of the *Penal Code*, I am guided by the holding in the Court of Appeal case of *Bonaya Tutu Ipu & Another v Republic* [2015] eKLR where it was stated as follows;

“It is in rare circumstances that the intention to cause death is proved by direct evidence. More frequently, that intention is established by or inferred from the surrounding circumstances. In the persuasive decision of *Chesakit v Uganda*, CR. APP. NO. 95 of 2004, the Court of Appeal of Uganda stated that in determining a charge of murder whether malice aforethought has been proved, the court must take into account factors such as the part of the body injured, the type of weapon used, if any, the type of injuries inflicted upon the deceased and the subsequent conduct of the accused person. Earlier in *Rex v Tubere s/o Ochen* (1945) 12 EACA 63, the former Court of Appeal for Eastern Africa stated thus on the issue:

It (the court) has a duty to perform in considering the weapon used and the part of the body injured, in arriving at a conclusion as to whether malice aforethought has been established, and it will be obvious that ordinarily an inference of malice will flow more readily from the case, say, of a spear or knife than from the use of a stick.....”
 25. In this case, the prosecution witnesses, more so PW1 clearly narrated what transpired on that fateful day and how the accused person stabbed the deceased. Her evidence was further in sync with that of



PW2, PW3 and PW5 who testified how the accused person's actions resulted to the deceased losing her life.

26. According to PW4 who conducted post mortem on the body of the deceased, he formed opinion that the cause of death was haemorrhagic shock secondary to mandibular fractures with possible damage to external carotid (right) and/or its branches. It is obvious that the mode of execution of the unlawful act of stabbing the deceased with a knife was intended to cause grievous harm with the foreseeable consequence that it would lead to death. It is logical to conclude that as a normal person, the accused knew or reasonably ought to have known the consequences of his unlawful action. From nature of the weapon used; the extent and intensity of the wounds occasioned plus the mode of execution, it is evident that death of the deceased was intended or desired.
27. From the above analysis, it is clear that the accused did not have any other intention but to inflict grievous harm which eventually caused the death of the deceased. It is trite that malice aforethought can thus be inferred not only from the weapon used to inflict injuries but also the nature of the injuries inflicted on the deceased resulting to death. There is no doubt that it was the accused herein who stabbed the deceased thus causing her death.
28. Taking into account the totality of the evidence and the submissions on record, it is my finding that the prosecution has proved the offence of murder against the accused person beyond any reasonable doubt. Consequently, accused person is found guilty as charged and convicted accordingly.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 26TH DAY OF APRIL 2024

J.N.ONYIEGO

JUDGE

