



**Republic v Musumba (Criminal Case E007 of 2022)  
[2024] KEHC 4230 (KLR) (26 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4230 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CRIMINAL CASE E007 OF 2022  
WM MUSYOKA, J  
APRIL 26, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**JEREMIAH OCHUADA MUSUMBA ..... ACCUSED**

**JUDGMENT**

1. The accused, Jeremiah Ochuada Musumba, faces a murder charge. It is alleged that on 14<sup>th</sup> June 2022, at Oyalo village, Samia Sub-County, within Busia County, he murdered his wife, Christine Anyango Ochwada. He denied the charges, and a trial ensued, where 7 witnesses testified.
2. PW1, Chrispinus Oluoch, was a distant uncle of the deceased. He did not witness the incident which led up to the death of the deceased. The accused fetched him at his shop, and took him to his home, where he was shown the deceased lying on the floor, injured. He was not told what had happened. The accused did not have any blood on him, when he first met PW1, but when he emerged from the kitchen, at his home, he had blood on his face. He conceded that the issue of the accused going to the kitchen, and coming out with blood on his face was not in his statement. PW2, Gabriel Adongo Awinja, was not present when the incident happened, but was called to the scene by the accused, who sent young men to call him. PW2 found the accused with PW1, and saw the deceased lying unconscious, with blood stains on the floor. He noted that the accused had blood on his face. He assisted to have the deceased put in a vehicle for removal to hospital.
3. PW3, Everlyne Taabu Ochwada, a daughter to the deceased, got an SMS text on her phone, informing her that the deceased was ill, and had been taken to hospital. She visited the deceased in hospital and established that she had died. She noted 4 stab wounds on the body. The accused was arrested thereafter. She talked of the accused and the deceased having a poor relationship, characterised by quarrels and fights, allegedly over a woman the accused was seeing. She stated that her uncle, Patrick had informed her that the accused had thoroughly beaten the deceased. PW4, Oundo Fred, was a worker



in the home of the accused and the deceased. On the material day, he left the accused alone at home. When he returned, he did not see the accused, but he later arrived with PW1, after which he heard a scream. When he approached the scene, he saw the accused bleeding on the face, and the deceased lying on the floor in bad shape, with an injury on her head. He assisted the accused and PW1 take the deceased to a vehicle, for travel to hospital. He stated that the deceased had been in the house with the accused, when he had left the home earlier.

4. PW5, Dr. Dickson Mchana, the pathologist, did post-mortem on the body of the deceased. The body had 2 multiple stab wounds. Internal bleeding caused the death, according to him, as the wound touched the heart, causing bleeding into the chest. He opined that proper medical intervention would not have saved the deceased.
5. PW6, Police Corporal Geoffrey Njeru, was the investigating officer. He detailed everything that he did in the course of the investigations, and explained why he believed the accused inflicted the injuries that caused the death of the deceased. PW7, Polycarp Lutta Kweyu, was a forensic analyst, who did the deoxyribonucleic acid (DNA) testing on a mattress and clothing, availed to him by PW5. He established that the mattress had blood from both the accused and the deceased, while some other items had the blood of either the accused or the deceased. PW8, Police Corporal Douglas Wamalwa was from the scenes of crime, and he produced photographs that he took at the scene.
6. I put the accused on his defence, on 27<sup>th</sup> November 2023. He testified on oath and called 3 witnesses.
7. He testified to have had spent the whole day together with the deceased on 13<sup>th</sup> June 2022. They were at Bumala market, to have their vehicle repaired. They sat around, drinking soda. They then left for home. They stopped over at Funyula, to have the car washed. They sat at a club where the deceased drank wine 2 glasses of wine, while the accused had water. Thereafter, they left for their home. At home, the accused heard the deceased speak to a man, on her mobile phone, telling the man that the accused had gotten confused after his retirement, and was sleeping around with prostitutes. She was also saying that he deserved to die for killing their daughter. When he entered the house, the deceased, who was drinking wine, cut short her conversation. He informed her that he had overheard her, and he demanded that she tell him the prostitute that he was walking around with. He also demanded that she should tell him who she had been talking to. She shouted. He asked her to pack and leave, and she shouted that it was him who was to leave, with his prostitute, or someone would die. She ran into the kitchen, and came back with a kitchen knife, and made as if to stab him. He took evasive action, and she hit him on the head. She made several attempts to stab him, with no success. He eventually held her from the back, and the knife fell. He rushed out and closed the door.
8. He decided to go call her brother, PW1, to assist cool or calm her down. He rushed to Funyula, and fetched PW1, they rushed home, and found the deceased lying on a sofa, alive, but not talking. PW1 advised that they should go to hospital. They put her in the car, and took her to Nangina Hospital. He said that she had stabbed herself on the chest. She was admitted at Nangina Hospital. He discharged her from there, and took her to Aga Khan, Busia. She was attended to, before being put on an ambulance for transfer to Aga Khan Hospital, Kisumu. On arrival at Aga Khan, Kisumu, she was declared dead. A police officer arrived, at that juncture, and arrested him. He denied killing her. He was taken to hospital by the police, as he had an injury to his head. He said that she had no injury on the chest when he left her for Funyula, to get PW1, and he found her with the injury when he got back, and assumed that she had stabbed herself.
9. During cross-examination, he said that she kept stabbing herself, every time she attempted to stab him. He saw that she hit herself on the stomach as she tried to stab him. He said he suspected that she committed suicide to avoid being questioned about the man she was talking to on telephone. He said



he was not upset about what she had said about him on phone, but he was not happy with her. He said that he had married another wife after the deceased died. He said she had stabbed herself twice on the stomach, and once on the chest. He said he went to call PW 1 to cool her down, as she was very violent, and he could not manage to take her to hospital, on his own.

10. DW2, John Bwire Odukulu, was at Funyula when the deceased rushed there to fetch PW1. He said the accused was bleeding from his head. The 2, the accused and PW1, left together. He said that he did not know what was happening at the home of the accused. DW3, Paul Oliongo Okello alias Wandera, was the mechanic who repaired the car belonging to the accused, at Bumala. He saw the accused and the deceased together at Bumala. They were drinking soda, talking and laughing. He did not see them quarrel. He did not know what happened thereafter. DW4, Cannur Masiga Oduor, was a cook at the club at Funyula, where the deceased and the accused sat, waiting for their car to be washed. The 2 sat at separate tables. The deceased drunk wine. The accused did not drink or eat anything. After their car was washed, they left together. He said that he did not notice anything unusual about the couple. He said that the deceased drunk a whole box of Caprice wine, and left with it. He said that he knew nothing about her death.
11. The accused filed written submissions. He submits that the prosecution had not established beyond reasonable doubt, that the accused killed the deceased arguing that the deceased had stabbed herself. It is submitted that there was no malice afterthought established. He further submits around the date when the alleged incident happened, as the charged referred to 14<sup>th</sup> June 2022, while the witness talked of 13<sup>th</sup> June 2022. He has cited Article 50 (2) of *the Constitution*, Antony Ndegwa Ngari vs Republic [2014] eKLR, and Republic vs Michael Mucheri Gatu [2002] eKLR and Saliar on evidence.
12. The prosecution has submitted that it has established a case of murder beyond reasonable doubt, and there is circumstantial evidence which points inexorably to the accused person. The State cites Antony Ndegwa Ngari vs Republic [2014] eKLR, Republic vs Richard Itweka Wahiti [2020] eKLR, Moris Aluoch vs Republic CRA No. 47 of 1996 (UR), David Muthee vs Republic CA No. 218 of 2005 [UR], Dafasi Magayi vs Uganda [1965] 1 EA 667, Ahmed Abolfaltu Mohammed & another vs Republic [2018] eKLR, Republic vs Jackson Namunyu Tali [2014] eKLR, Rex vs Kipkering Arap Koske & 2 others [1949] EACA 135, and Benard Ombuma vs Republic [2019] eKLR.
13. Both sides are on all fours on the elements of the offence of murder. The elements are proof of the death, the cause of it, the involvement of the accused in the causation, and the fact that he caused the same with malice afterthought.
14. On the death, there is ample proof that the deceased died. PW1, PW3 and PW4 testified on the death. PW5 conducted post-mortem on her dead body. PW6 was present at the post-mortem exercise. The accused person himself testified that the deceased died in the process of him rushing her to hospital at Kisumu.
15. On the cause of death, the evidence of the pathologist, PW5, is crucial. He testified that the body had multiple stab wounds, and he opined that the deceased died of stab wounds from assault. He said that the stab wound to the chest reached the heart, causing bleeding into the chest cavity, and lung collapse. He stated that given that chest injury, medical intervention could not have even saved her.
16. On the role of the accused in the causation, the available evidence is that the accused and the deceased spent the whole day together. In that early evening, they had a disagreement, followed by a confrontation, during which the deceased allegedly harmed herself with a knife. According to the accused, the injuries were self-inflicted. The 2, the deceased and the accused, were alone in that house at the time, and the only available narrative of what transpired came from the accused. The deceased allegedly stabbed herself twice on the stomach, blows that were aimed at the accused, but which he



managed to evade. The chest injury, which was the decisive one, according to PW5, was, according to the accused, inflicted in his absence, after he had gone out to fetch PW1. The accused opined that the deceased stabbed herself in the chest, in apparent suicide, to avoid being questioned about the man that she was talking to on phone, within the earshot of the accused.

17. So, did the accused have any role in the causation? Did he have any role in the infliction of the injuries that caused the death? The accused denied causing any of those injuries. He stated that he did not even touch the knife. Is his testimony believable? I doubt it. He concedes that there had been a disagreement and a confrontation. The disagreement swirled around accusations of infidelity, with the accused accusing the deceased of talking to another man on phone, and the deceased accusing him of prostituting around with other women. The deceased had also allegedly called the accused the killer of their daughter. It was the accused who came up with that narrative about an active disagreement, and confrontation, and he even talked of a fight, although he denied being angry with the deceased. The picture the accused painted was of inflamed passions. Counter-accusations were made, of the kind that could provoke domestic fights. I find it hard to believe that the accused did not get angry with his wife, the deceased, for calling him a killer of their daughter, and a prostitute. Indeed, he testified that he began the confrontation, after he chanced upon her chatting to another man, and she disconnected the call suddenly. The atmosphere that he described was just right for the sort of domestic violence that could end in death. I also find it hard to believe that the multiple injuries noted by PW5 were self-inflicted. The accused claimed that he went out to call PW1, to come and calm the deceased down, but PW1 did not confirm that. PW1 testified that the accused wanted him to go and see what had happened at his house, and when he got there, he pointed at the deceased, who was lying on the floor helpless. The deceased had life threatening injuries, yet the accused had only a single injury on the head, which allowed him to move up and about. I find it hard to believe that the accused let his wife, the deceased, harm herself, without him disarming her, before he left her locked up in the house alone, with the knife.
18. The conclusion, I draw, therefore, from these facts, is that the accused person had a role in the causation of the death of the deceased. I find that he either inflicted all the injuries on the body of the deceased, or at least some of them. The accused painted the picture of the deceased as having been drunk, while he was sober. She started drinking at Funyula, according to him, and continued at home, while he only drunk soda, at Bumala, and water at Funyula. He stated that she started getting drunk at Funyula. So, of the 2, he was the stronger, at the material time, for he had no liquor in his veins or system. He should have been strong enough to restrain the drunk woman, or, at least to disarm her, and to keep her secured. He was the one who was strong enough to drive a knife into her heart. The stab wound was so bad, that PW5 opined that it was a miracle that she survived for long prior to death, adding that proper medical intervention could not have saved her from death, and, therefore, suggesting that the injury was of the kind that should have caused instant death. I am persuaded, therefore, that the accused inflicted the fatal injuries on the deceased.
19. The last consideration should be whether the accused caused that death with malice afterthought. What constitutes malice aforethought is defined in section 206 of the Penal Code, Cap 63, Laws of Kenya. One, it is a direct intention to cause death, usually signified by a verbal expression of a desire to kill. Two, it is an intention to cause grievous harm, or to cause a bad injury, which results in death. This is usually inferred from the circumstances. Three, it is knowledge that the act causing death could cause death, or grievous harm, but the perpetrator is indifferent to the consequences. Four, it is an intention to commit a felony, such as assault or battery or whichever. These four would suffice for the purposes of this discussion.



20. The question then is, were the injuries inflicted on the deceased so inflicted with an intention to kill her, or with an intention to cause to her a bad injury, or were they caused recklessly and indifferently, or was the intention to commit some sort of felony? The killer blow was the stab to the heart. There is ample case law that any injury caused to the chest, which houses such vital organs, such as the heart and the lungs, would be deemed, should it cause death, to have been so inflicted with that intention. The injury in this case was to the heart. PW5 testified that with that kind of injury death was inevitable, despite the best of medical intervention. A blow in that area or region of the body must have been calculated and intended to cause death, or to cause a very bad injury. The blow was clinical and precise. It is not lost on me that the accused is a retired soldier or military man, who must have received training on how to kill or to cause bad injuries, and to do so clinically. I am persuaded that the death was caused with malice aforethought.
21. Of course, none of the witnesses, from both sides, were present when the injuries were inflicted. It was just the accused and the deceased who were there. The deceased died before giving a narration of what transpired, and, therefore, the only version available is that of the deceased. The case is, therefore, built on circumstantial evidence. It is trite that circumstantial evidence must inexorably point to the guilt of the accused, for there to be a conviction founded on it. Is that the case here? Yes, firstly, the accused is placed at the scene where and when the fatal injuries happened. Secondly, there was an active disagreement and confrontation that preceded the inflicting of the fatal injuries, which created a perfect background for the infliction of such injuries. Thirdly, and finally, PW1, PW2 and PW4 came to the scene shortly thereafter and saw the deceased badly hurt. They at the invitation of the accused.
22. There was some evidence that the accused suffered some injury, suggesting that there was a fight, and both sides inflicted injury on their adversaries. PW1 suggested that the accused might have deliberately inflicted that injury on himself, well after the deceased had been immobilised, to provide some defence of self-defence. The testimony by DW2 suggests otherwise. Whatever the case, and as indicated elsewhere, the injury on the accused was largely superficial, for he was able to be up and about, and he was only taken to hospital by PW6, after he had been placed in custody. He never sought treatment for that injury before his arrest. It could not have been serious enough to be life-threatening, and it was not anywhere near the fatal injuries that caused the death of the deceased a few hours after infliction. There might have been some element of self-defence, or defensive action, on the part of the accused, but the same cannot be justified, in view of the deadly injuries suffered by the deceased.
23. The accused suggested that the deceased killed herself to escape accountability for having had a telephone conversation with an unknown man. No evidence was led that the deceased had a history of suicidal tendencies. The accused had not found her in a compromising situation with another man, whether flagrante delicto or otherwise, to justify her fearing to account. She was on phone with someone, that the accused believed to be a man. The accused was, according to his own narrative, eavesdropping on that alleged conversation, while outside a closed door, with the deceased on the inside. I doubt the plausibility of the allegation that the deceased was on phone with another man, and, even if she was, I doubt that that could provide justification for her killing herself.
24. There are submissions around the charge that the death was caused on 14<sup>th</sup> June 2022, while the witnesses talked of 13<sup>th</sup> June 2022. That is true and correct, according to the record before me. However, that anomaly is not fatal, it did not present the accused person with any difficulty or hardship in framing and articulating his defence. It was clear that the charge related to the death of his wife, the deceased herein. The evidence tendered by the State turned on that, and, from his defence, the accused was very clear about the charge he faced, and the evidence that he needed to marshal to meet that charge. Whether the death was caused on 13<sup>th</sup> June 2022 or 14<sup>th</sup> June 2022 is of little moment, in the circumstances.



25. Overall, it is my finding and holding that the offence of murder has been sufficiently proved against the accused person herein, and I do hereby convict him, under section 322 of the Criminal Procedure Code, Cap 75, Laws of Kenya. For the purposes of sentence, I direct the Busia County Director of Probation and Aftercare Services to assess the antecedents of the accused, and to take the views of the family of the deceased, and the community, and thereafter file a report, within 14 days. The matter shall be mentioned thereafter for receipt of the report, mitigation and sentence. It is so ordered.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 26<sup>TH</sup> DAY OF APRIL 2024**

**WM MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

**Advocates**

Ms. Chepkonga, instructed by the Director of Public Prosecutions, for the State.

Mr. Onsongo and Mr. Ipapu, instructed by Obwoye Onsongo & Company, Advocates for the accused person.

