



**Republic v Mulei (Criminal Case 41 of 2016) [2024] KEHC 6593 (KLR) (27 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6593 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS**

**CRIMINAL CASE 41 OF 2016**

**MW MUIGAI, J**

**MAY 27, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JOHN MALI MULEI ..... ACCUSED**

**RULING**

**Background**

1. The accused herein John Mali Mulei has been charged with the offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars being that the accused on 25<sup>th</sup> day of October, 2016 at Syokimau estate within Mlolongo in Athi River Sub- County , within Machakos County murdered Florence Mueni Mbuki.
2. The Mental Assessments dated 6<sup>th</sup> June, 2017 and filed on 7<sup>th</sup> July 2017 Fit to plead. The Accused person herein took plea on 3/08/2017 whereof after the charges were read out to him in a language that he understood he pleaded Not Guilty. A plea of Not Guilty was entered on his behalf.
3. The Accused person was taken for a fresh mental assessment and a report dated 4<sup>th</sup> November, 2019 and filed in Court on 26<sup>th</sup> November, 2019 found the accused person capable of making his defence.
4. The Accused person was represented by Mr. Kyalo Advocate while the state was represented by Mr. Machogu and later Mr. Mwongera.
5. The hearing took off and the prosecution called a total of five (5) witnesses.
6. PW1 Jackson Sila Muthiani told the court that on 25/10/2016 he went to the deceased house situated at Jambo court in Syokimau to do some repairs but on knocking the gate there was no response, he then called out her name to no avail. He decided to call her number but there was no response. He then peeped through a hole in the gate and saw the accused herein who used to be there. Later, the father to accused arrived and found him at the gate and directed him and his fellow worker , Robin to jump



over the gate so as to have the gate opened. They entered the compound but still the key to the gate could not be located. The father to Mueni invited him into the house where I found the accused herein looking suspicious and the body of the deceased lay on the corridor. The police arrived at the scene and recovered a twisted knife that had been used. He said that the accused's T-shirt had bloodstains and he had a stab wound on the right hand. The police checked accused's bedroom and recovered another bloodstained knife. The accused's shoes were also soaked in blood.

7. In cross examination he stated that he had known the accused and his family for three years. He knew that the accused was a university student and three months prior to the incident, the accused started having strange behaviors and PW1 alerted his parents. He said that the accused used to question his parents wealth and suspected that they could have been using jinns to acquire wealth. He said that the accused used to be rude to the deceased and on that day the accused appeared abnormally
8. PW2, Susan Wanjiru Ngugi who works at the Government Chemist Department in the forensic biology section told the court that they received an exhibit memo from No.75834 PC Moses Muange of Mlolongo police station as follows:-
  - a. A1- Clothes of accused person – John Mali Mulei which comprised light grey polo T-shirt and light purple polo T-shirt.
  - b. A2 – Blood sample of the accused person.
  - c. A3 - shoes (black with white sole) packed in a khaki envelope from accused person.
  - d. D1 – Blood sample of deceased Florence Mueni Ndambuki.
  - e. D2 – Clothes of deceased person which comprised a green polo T-shirt packed in a khaki envelope belonging to the deceased.
  - f. B1 – Cotton wool swab in a khaki envelope indicated to be from bedroom floor.
  - g. K1 - 3 knives with wooden handles packed in a khaki envelope.
  - h. K2 – cotton wool swab from the kitchen floor.
9. She said that the exhibits underwent preliminary analysis and she produced the report on behalf of one Lawrence Kinyua Mukuri on 14/02/2019, a colleague she said she had worked with for 8 years. The report concluded that the DNA profile form (A2) was from unknown male origin, the bloodstains on the cotton wool (D1) 1 pair of shoes (A3) knives K1 (i) and K1(iii) did not generate a DNA profile
10. PW.3 James Makau told the court that the accused person is my elder brother and on 25/10/2016, he had breakfast with his father Julius Makau and mother Mueni around 5.30 a.m and set off with my father to school. He said he left the accused in the house with his mother. At 11.46 a.m. the School Accountant/Maths Teacher Mr. Wafula and Mr. Ogolla came told me to pick his things and he boarded the school vehicle, a probox and was driven home to Syokimau area where he found his father at the gate. The front door was locked and they went to the back door with my father, he found the mother was no more and there was a pool of blood and his brother was in the room walking aimlessly. He said the accused had a deep cut on his hand which he did not leave him with in the morning.
11. He said that as he entered the room he found his mother at the verandah of the back door towards the kitchen and on the ground was a small knife. There were 3 knives were at the scene itself when he went in with my dad. The accused was looking at me aimlessly and he did not look normal, his shirt had blood and he did not notice. He said the accused has history of mental illness ever since since 2016. He said there were footprints of blood and the accused was taken to the Mlolongo Police Station.



12. Upon cross examination, he said that the accused person was in school at U.o.N – Nairobi University either 2<sup>nd</sup> or 3<sup>rd</sup> year. The accused person would disappear from home and he would appear after some time. He said that the accused person bothered people aimlessly. He asks a stranger for something or enters someone's vehicle and to be taken somewhere. He said that from 2016 the accused's behaviour changed; he was not communicating and stayed alone. He was rude to people for no reason and was very rude to the deceased. He said that the accused person told him he did not feel well and sometimes heard voices people speaking to him in the head.
13. PW4 PC. Arnold Mati told the court that on 25/10/2016 he was at the police station when he was called by inspector Gatambia OCS Crime and together with Duty officer Cpl. Mbithi were told to go to Jambo in Syokimau Area where a case of murder had occurred. He said that when we got there accompanied by the owner of the home who reported the case, they got into the compound, they found that the door of the house was opened and inside the corridor near the kitchen there was the body of a woman soaked in blood and lay on the ground facing down. She had stab wounds right hand, on the face and on the left side of the ribs and her clothes were also soaked in blood.
14. He said that the door of the kitchen was opened and there was blood on the floor of the kitchen and everything scatter everywhere. There were 2 knives on the table of the kitchen. They went to the bedroom where the accused person was and he looked shaken and scared and he was in shock not in normal position/person. In the room we found another knife with blood. His T-shirt had blood.
15. Upon cross examination he said that he was the scene visiting officer.
16. PW5. Retired Inspector Patrick Ndungu Gatambia told the court that the John on 25/10/2016 at around 11 a.m. he got a report from Mr Jackson Sila that a woman had been killed at Jambo Court Syokimau. Thereafter, he dispatched 3 officers and he followed them with station land cruiser and at the scene we found Florence Ndambuki at the verandah of the house. They found 2 knives beside the deceased's body and they took clothes of John Mali Mulei in his bedroom, the clothes on the floor for blood samples and later they got into the bedroom of John Mali Mulei where they found a 3<sup>rd</sup> knife fresh with blood stains. They took the sketch files/map. The deceased's body was taken to Machakos level Hospital and we took the clothes and knives and were taken for analysis. He said that the clothes we collected are a blue sweater, T- shirt and short.
17. He said that after 2 days a Post mortem was conducted at Machakos level 5 Hospital by a Pathologist and it was established that the heart was injured/had injuries which caused the death of Florence Ndambuki. The deceased had wounds arising from the self defence around the body. At the scene, he said that the accused person also had an injury on his right hand which was bleeding and blood samples were taken. The accused looked confused and he did not know what happened.
18. Upon cross examination, he stated that he was the head of the investigation Team and he got to the scene at 11.40 a.m. He said that Pc. Moses Mwangi arrived at the scene ahead of them and the accused person was on the verandah then he went to the bedroom. The deceased was on the floor on the verandah near kitchen near the door to sitting room. He said that the accused looked confused on that day and at the scene as he seemed to know what was going on and other times he did not seem to know. The doctors examined the accused person
19. PW6 ,Dr. Mativo Mwikali produced the Post mortem report under Section 77 CPC that was filled by Dr. Kalekye Ndeto on 27/10/2016. He said that the body was found at Syokimau on 25/10/2016 at 2.17 p.m. The brief history given is that the deceased was found lying dead inside her house after several stabs with a kitchen knife after picking a quarrel with the suspect.



20. The post mortem findings indicates that the post mortem conducted on 27/10/2016 at Machakos Level 5 Hospital at 12.30 p.m and it was indicated as follows;
- a. General observation – clothing black skirt, green T-shirt that were blood stained, black petticoat and white bra and white pant all soaked in blood.
  - b. Female adult well nourished –
  - c. Post mortem changes – body was refrigerated
  - d. Hardening of the body – rigermotis of lower limbs
  - e. External appearance of body – severely pale – paper white
  - f. 19 stab wounds on the face (5) skull (4) hands (2) on the left and (2) on the right chest (2) and abdomen (5)
  - g. The largest stab wound – 8 cm on the face and chest smallest – 2 cm on the scalp.
  - h. On the internal appearance of the body respiratory system – stab wound 6th – 7th rib- between 2nd – 3rd ribs.
  - i. Massive hemothorax – a lot of blood matter - chest entry on the left side 1500 ml of blood.
  - j. A tear on the left ventricle wall – hear 6 cm with blood within pericardium pocket lines the heart 200ml.
  - k. Cardiovascular system – same finding on left ventricle wall 6 cm blood in the pericardium 200 mls.
  - l. Digestive system penetrating wound on the right side laceration of the stomach 8 cm.
  - m. Large gut – 6 cm – spillage of food contents.
  - n. Genital – urinary system – Non remarkable
  - o. Head – 4 lacerations of the scalp
  - p. Nervous system – Brain – non remarkable (normal)
  - q. Spinal cord – Non exposed
  - r. From examination findings – opinion of Cause Of Death – severe haemorrhage secondary due to chest injuries in the heart penetrating injury to the heart from multiple stab wounds. Specimens taken were blood samples.
21. Upon cross examination he said that the deceased's clothes were blood stained, he did not know where they were taken. He could not tell where the blood items were taken or if blood was taken from the accused person. He said the Report shows 19 stab wounds and he could not ascertain that he may have been under influence of anything.

### **Finding**

22. The matter commenced hearing on 30/9/2020 before Hon. D. K. Kemei J who took the evidence of Pw1 and Pw2.
23. This Court took over the matter on 31/11/2021 and proceedings were typed and parties/counsel obtained the copies of the same.



24. On 8/3/2022, Section 200-201 CPC was read/explained to the Accused person by the Court Assistant Geoffrey in Kiswahili and the Accused person opted to proceed from where the matter stopped. This Court granted the order to have the matter placed before the Trial Judge to complete the hearing as it was mostly heard by the Trial Court and had been in Court for 6 years.
25. On 9/3/2022, the Prosecution proceeded with its case and called Pw3, on 14/7/2022 called PW4, on 25/10/22 called PW5 and on 30/11/2022 called PW6 10 to give their evidence.
26. The Prosecution closed its case on 30/11/2022 and parties/Counsel were to file Written Submissions.
27. At the Close of the Prosecution case, this Court read through the Court record and documentary exhibits produced during trial and considered the totality of the evidence.
28. In the case of Anthony Njue Njeru vs Republic Court of Appeal No 77 of 2006; the Court determined the scope and content of case or no case to answer Ruling by the Court as follows;

[Is]Was there a prima facie case to warrant the Trial Court to call upon the appellant to defend himself? It is a cardinal principle of our law that the onus is on the prosecution to prove its case beyond reasonable doubt and a prima facie case is not made out if, at the close of prosecution the case is merely one “which on full consideration might possibly be thought sufficient to sustain a conviction”.

29. The issue of what is a *prima facie* case in criminal trials was clearly explained in *Ramanlal Trambaklal Bhatt V R* [1957] E.A. 332 at p. 334-335 where it was said:-

“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out if, at the close of the prosecution, the case is merely one:-

“Which on full consideration might possibly be thought sufficient to sustain a conviction.”

This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case.

Nor can we agree that the question whether there is a case to answer depends only on whether there is:-

“some evidence, irrespective of its credibility or weight, sufficient to put the accused on his defence.”

A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence. It is true, as Wilson, J., said, that the court is not required at that stage to decide finally whether the evidence is worthy of credit, or whether if believed it is weighty enough to prove the case conclusively: that final determination can only properly be made when the case for the defence has been heard. It may not be easy to define what is meant by a “prima facie case,” but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.”

30. In the instant case, on record the evidence recorded is that on 25/10/2016 Pw1 found the deceased’s body at her house lying on the floor of the corridor. The accused’s T-shirt had bloodstains and he had a stab wound on the right hand. His shoes were also soaked in blood.



31. PW3 found the mother's body on the floor in a pool of blood. The accused was looking at me aimlessly and he did not look normal, his shirt had blood and he did not notice. He also had a cut wound which was not there in the morning when PW3 left for school.
32. PW 5's evidence on record is that she found the deceased lying in a pool of blood and they took samples. Further, that Post mortem established that the heart was injured/had injuries which caused the death of Florence Ndambuki. The deceased had wounds arising from the self defence around the body. It is his evidence that at the scene, he said that the accused person also had an injury on his right hand which was bleeding and blood samples were taken
33. Pw4's evidence on record is that inside the corridor near the kitchen there was the body of a woman soaked in blood and lay on the ground facing down with stab wounds right hand, on the face and on the left side of the ribs and her clothes were also soaked in blood. He said that the door of the kitchen was opened and there was blood on the floor of the kitchen and everything scatter everywhere. The accused person was in his bedroom and he looked shaken and scared and he was in shock not in normal position/person. His T-shirt had blood. In the room we found another knife with blood.
34. Pw2's evidence on record is that the forensic report was produced on behalf of one Lawrence Kinyua Mukuri on 14/02/2019, a colleague with whom she had worked with for 8 years. The report concluded that the DNA profile form (A2) was from unknown male origin, the bloodstains on the cotton wool (D1) 1 pair of shoes (A3) knives K1 (i) and K1(iii) did not generate a DNA profile.

### **Disposition**

- (1) Upon this Court's consideration of the totality of the evidence adduced and on record, the Prosecution has proved a prima facie case ".....one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence."
- (2) The evidence of witness Pw1 & PW3 coupled with the formal witnesses Pw2, Pw4 & Pw5 confirm that the deceased died from an unlawful act and places the Accused person at the scene and time of incident and the circumstances outlined target the Accused person. The evidence on record discloses commission of the criminal offence of murder c/s 203 of the Penal Code and is sufficient to warrant the Accused person to be placed on her defense.
- (3) The law requires that the Accused exercises the legal right as prescribed under Sections 306 CPC.

**RULING DELIVERED DATED & SIGNED IN OPEN COURT ON 27/5/2024 AT MACHAKOS HIGH COURT (VIRTUALLY /PHYSICALLY).**

**M.W.MUIGAI**

**JUDGE**

