



**Republic v Museveni (Criminal Case 11 of 2020)
[2023] KEHC 24570 (KLR) (31 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 24570 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE 11 OF 2020
ACA ONG'INJO, J
OCTOBER 31, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

PAUL JOHNSON MUSEVENI ACCUSED

JUDGMENT

Introduction

1. The accused person Paul Johnson Museveni faces a charge of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#) Cap 63 of the Laws of Kenya.
2. The particulars are that Paul Johnson Museveni between the period of 21st April 2020 and 25th April 2020 at Mgandini Village, Vipingo Sub-County within Kilifi County jointly with others not before court murdered Margaret Mwendé Kioko.
3. The prosecution called 5 witnesses to support its case that the accused person committed the offence herein. No submissions were filed by the accused and he was placed on his defence.

Prosecution Case

4. PW1, Josephine Mwendé, said that the deceased and the accused were known to her. That the deceased stayed in Mtwapa and told her that she wanted to relocate to Vipingo where she got a job as a storekeeper at Vipingo Ridge. That when the deceased came to Mombasa, she told PW1 that she had a boyfriend known as Paul who was a Kamba. That after some time, they had a misunderstanding and that is when she moved to Vipingo where she got a job at Centum. That when the deceased moved to Vipingo where PW1 was also staying, they got closer to each other and that they shared a lot and could visit each other. That on 18.4.2020, the deceased told PW1 that a guy called Rasta had visited her and because of curfew, Rasta could not leave to Majengo. That on 19.4.2020, Rasta woke up early in the



- morning but left his bag and that he said he would go back for it at 5.00 pm but went for it at 7.00 pm. That the deceased told him he could not stay over and that he should pack his belongings and leave. That a quarrel ensued and neighbours went to intervene.
5. PW1 testified that on 19.4.2020 at 10.00 pm, the deceased called her and informed her that Rasta showed up again and they were quarreling. That she wanted PW1 to go but she told her to ask the neighbours to intervene. That on 20.4.2020 at 11.00 am, PW1 went to Mwendé's place to ask what happened and she told her that Rasta wanted her to be his girlfriend but when she refused, Rasta told her that he was going to Malindi and when he gets back, Mwendé would know who he was. That in the company of Gabriel, Francis and Mwendé, they went to look for a house where they were to live together. That while in Vipingo looking for a house, they took a video showing Mwendé was wearing a maroon cap. PW1 identified the cap as the one in court and the same one that the deceased was wearing on 20.4.2020 when they went to look for a house. That they passed by PW1's house where they took coffee and the three left.
 6. PW1 further stated that on 21.4.2020, she got a message from Gabriel and Francis who were Mwendé's neighbours asking if she knew about the whereabouts of Mwendé. That she told them that she had not spoken to her since they left her house. That PW1 went to Mwendé's house and found her door had not been locked. That PW1 in the company of Francis and one of the neighbours entered the house and they discovered the gas which was usually on the stool was not there. That a wig she used to wear was also not there and the wardrobe was disorganized. That they tried to call the phone number but it was being disconnected and after some time the phone stopped going through. That they went to Kijipwa and reported and the report was booked as No. 26/23/4/2020 at 3.25 pm. That the police told them to keep calling her and that PW1 kept texting and the texts were being delivered.
 7. PW1 said that on 25.4.2020 when she went out to shop she heard people saying that there was a body recovered and it appeared it was for Mwendé. That PW1 went to Utalii forest where the body was where she found the police from Mtwapa and she confirmed that the body was indeed that of the deceased and that it was decomposed. PW1 said that the deceased had tattoos on the right side of the neck, right hand and leg, she had beads on her right leg, and a black bangle on her left wrist. That the body was collected and taken to Kilifi Hospital Mortuary. That she was called by DCIO to identify some items which included a gas cylinder, blue ring, a cap, and 2 necklaces which belonged to the deceased.
 8. PW2, Paul Muli, said the deceased was his wife and that they cohabited for 3 years from 2016 before going their separate ways in September 2019. That on 25.4.2020 at around 2.00 pm, he received a call from his friend Wambui who informed him that a body had been recovered in Vipingo. That the deceased's mum wanted to talk to the deceased but she was not picking and she called him as she was worried about her. That PW2 called Betty, a close friend of the deceased, who was in Mtwapa to go to her house and find out, and Betty told him the deceased had been missing for 3 days.
 9. PW2 testified that on 25.4.2020 at 5.00 pm Wambui called and gave PW2 the phone number of Umi who was a friend of the deceased. That when he spoke to Umi, she sounded distressed and said that the body of the deceased was in a bad state. PW2 called some of the deceased's friends and mother to alert them and that the next day, he went to Kilifi General Hospital Mortuary to identify the body for postmortem. That on 18.5.2020, he was called by the police to Mtwapa Police Station to record a statement. That they also went to the accused person's house in Vipingo and recovered the deceased person's belongings which included a shiny silver necklace, flowery underwear, maroon cap, remote for TV and Go TV, another chain, and polka dotted underwear. PW2 identified the accused as the one in court.



10. PW3, Naram Parba Varsani, said that on 26.5.2020, he was called to Mtwapa Police Station and asked if he knew the deceased as they had previously worked together in Vipingo. That he was shown a necklace and asked to identify it. PW3 said that he was the one who gave the deceased money to buy the necklace and that after buying she showed it to him and it was gold plated, and he identified it as the one in court. That he then recorded his statement.
11. PW4, Dr. Imran Salim Baitia, produced the postmortem report conducted by Dr. Nyangi and that he knew her signature which was on the report. That the postmortem report was in respect of the body of Margaret Mwende Kioko which was identified by Mercy Indalo Goka and Paul Muli Mutunga. PW4 said that the postmortem was conducted on 28.4.2020 at 10.00 am at Kilifi County Hospital Mortuary. He said that the deceased was in a black body bag and that decomposition was evident with maggot infestation. That externally, there were no signs of recent injuries.
12. PW4 said that on internal appearance, the respiratory, cardiovascular, digestive and genito urinary systems had extensive organ autolysis – decomposition. That there were no visible injuries on the skull and the nervous system, the brain, was completely autolyzed. That the spinal column was normal up to the dissection limit and that the spinal cord was not exposed. That as a result of the examination, the cause of death was unascertained. That samples which included part of the liver, one kidney and stomach were taken for toxicology.
13. PW5, No. 113752 P.C. Collins Odhiambo, testified that on 25.4.2020, the DCIO assigned him a case pertaining a decomposing body discovered in a thicket in Vipingo. That they proceeded to the scene and found the body was of a lady who was yet to be identified. That some neighbours were able to identify a tattoo on the right upper hand and there was also a bracelet that made it possible for the body to be identified as that of Margaret Mwende who was reported missing on 20.4.2020 by her friends at Kijipwa Police Station. PW5 said that they got word from the neighbours that there was an altercation between the deceased and her then boyfriend, one Baya on 19.4.2020 before her disappearance. That they arrested Baya on 5.5.2020 and sought custodial orders to enable them do investigations.
14. PW5 informed court that with their counterparts from Forensic Unit they located people who were using the deceased's phone and they arrested one Dominic who led them to Paul Museveni whom they learnt had already moved to a location which was 100 m from where the body was found. That they arrested Paul on 13.5.2020. PW5 stated that they continued with investigations and sought for custodial orders for Paul Museveni. That they were able to arrest Margaret Oloo, a shopkeeper who was given a Huawei phone by Paul Museveni as collateral for foodstuff from the shop and that the phone belonged to the deceased.
15. PW5 said that on 14.5.2020, they went back to Paul Museveni's house and recovered items which according to Margaret's friend belonged to the deceased. That on the day that the body of the deceased was discovered, they went to the deceased person's house and noted that some items were missing, which items were found in the accused person's house. That it got to their attention that while in custody, Museveni was communicating with a neighbour known as Munyeso whom he had asked to take the phone in the house and clothes to him. That Munyeso heard a phone ringing from Museveni's house and when he picked it, he discovered it was Museveni calling from the police station. That when Munyeso got to the station with the phone and clothes, they took him in for questioning together with other witnesses.
16. PW5 said that on 22.5.2020, they closed Baya's Miscellaneous application file as there was no evidence connecting him to the murder. That he compiled a file in respect of the murder against Paul Museveni and he was charged. That while closing Museveni's miscellaneous case, PW5 learnt that he had been



charged with the offence of burglary and stealing at Shanzu Law Courts. PW5 produced the items recovered.

Defence Case

17. The accused, Paul Johnson Museveni, gave sworn statement that the deceased was known to him when he was building a go down in Majengo Kanamai. That after a week, he got another job at Vipingo Ridge in Kilifi where he connected her to work as a storekeeper with Centum. That Margaret wanted him to get her a house as she was staying with a friend and they had differed. That their intention was that Margaret was to be his 4th wife and in the course of their interaction, he learnt that Margaret used to drink any kind of alcohol. That after the accused got her a house, he relocated to Miritini Estate where he got work and that he also got employment for Baya who was an electrician and plumber, and that he learnt that Baya had a relationship with Margaret.
18. The accused said that he left for Malindi in March 2020 as he wanted to do tiling and that he stayed in Kilifi for two weeks. That he then got sick and was taken to hospital and Margaret as well as a neighbour visited him in hospital. That he told her to go to his house and get some money and when she did not return and when he called and she did not pick, he suspected she had gone back to drinking. That the maroon cap was recovered from the house he was occupying and that there were more than 7 caps as the deceased liked wearing caps. That the deceased left it in his house as his lover and he had no reason to stop her. He denied that the items recovered from his house belonged to the deceased.

Analysis and Determination

19. In consideration of the evidence of 5 prosecution witnesses and in consideration of the defence witnesses' sworn statements, this court is to determine whether the ingredients of the offence of murder as provided for under Section 203 of the Penal Code Chapter 63 of the Laws of Kenya have been proved beyond reasonable doubt by the prosecution.
20. Section 203 of the *Penal Code* Chapter 63 of the Laws of Kenya under which the accused person was charged provides as follows: -

‘Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.’
21. The said provision creates elements of the offence of murder that must be proved by the prosecution beyond reasonable doubt as held in the case of *Anthony Ndegwa Ngari v Republic* [2014] eKLR to include: -
 - i. That the deceased died;
 - ii. That the death was caused by an unlawful act or omission;
 - iii. That the accused person directly or indirectly participated in the commission of the alleged offence; and
 - iv. That there was malice aforethought.

Death of the deceased

22. There is no dispute as to the death of the deceased. Her decomposing body was discovered on 25.4.2020 in the bushes next to Migandini village/Utalii forest 5 days after she was reported missing.



Death was caused by an unlawful act or omission

23. Although the cause of death was uncertain due extensive body autolysis, it can safely be concluded that she did not die a natural death. Her death must have been as a result of an unlawful act.

Participation of the accused in the commission of the alleged offence

24. PW1, Josephine Mwendu said that they were with the deceased person on 20.4.2020 when in the company of Gabriel and Francis they went to look for a house where they could live together. That after the search, they passed by the deceased person's house, took coffee before they went to their respective houses. When Gabriel and Francis informed her the following day on 21.4.2020 that they had not seen the deceased, they went to the deceased person's house and found that the door was not locked and several items in the house were missing. When they tried to reach her through her phone and her phone was being disconnected, they sensed that there was trouble and the matter was reported to Kijipwa Police Station.
25. There was no eye witness to the murder or what transpired that led to the death of the deceased whose decomposing body was found in Utalii forest. Following investigations from PW5 and other officers from DCI Mtwapa, the deceased person's boyfriend known as Baya was arrested on 5th May 2020 and Dominic was also arrested when it was established he had used the deceased person's phone for a few hours. That on arrest of Dominic, he led to the arrest of the accused person herein on 13.5.2020 at night. Dominic said that the accused was known to them as Abdul. Further investigation led to the arrest of one Margaret Oloo, a shopkeeper who was given a Huawei phone by the accused person as collateral for foodstuff from the shop. The Huawei phone was established to belong to the deceased person. When the police visited the accused person's home once more on 14.5.2020, several items that were identified by PW1, PW2 and PW3 as belonging to the deceased were recovered.
26. The accused person's explanation as to how the items got into his house was that the deceased was his girlfriend and that he had intended to marry her and he could not have told her not to leave her personal items in his house as she used to visit him. He went further to explain the size of the innerwear that the deceased was wearing was of similar size to his and that the innerwear was not for the deceased. He said that the chains that were recovered belonged to the ex-wife but did not give the name of the ex-wife. All that the accused person has said in his defence was never raised with the prosecution witnesses especially the investigating officer. The accused also claimed that he had been sick and admitted and the deceased visited him in hospital but he does not account for his whereabouts during the period when the deceased went missing until her decomposing body was found in the forest 100m away from his house.
27. In consideration of the evidence of prosecution witnesses that the accused person was found in possession of the deceased person's personal items so recently after the same had been stolen from the deceased, his defence is a mere denial and an afterthought and cannot be regarded by this court. This court finds that the only inference that can be made is that the accused murdered the deceased and stole her personal items.

Malice aforethought

28. Section 206 of the *Penal Code* defines malice aforethought as follows: -

“Malice aforethought shall be deemed to be established by evidence proving anyone or more of the following circumstances: -



- (a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;
- (b) knowledge that the act or omission causing death will probably cause the death or grievous harm to some person, whether that person is the person actually 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;
- (d) an intention by act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony”.

29. On the element of malice aforethought in respect to Section 206 of the Penal Code, the court held as follows in the case of *Isaac Kimathi Kanuachobi -vs- R* (2013) eKLR: -

“There is express, implied and constructive malice. Express malice is proved when it is shown that an accused person intended to kill while implied malice is established when it is shown that he intended to cause grievous bodily harm. When it is proved that an accused killed in further course of a felony (for example rape, a robbery or when resisting or preventing lawful arrest) even though there was no intention to kill or cause grievous bodily harm, he is said to have had constructive malice aforethought.”

30. The elements to prove malice aforethought were settled in the case of *Ernest Asami Bwire Abanga alias Onyango v R* (CACRA No. 32 of 1990) where the Court held:

“the question of intention can be inferred from the true consequences of the unlawful acts or omission of the brutal killing, which was well planned and calculated to kill or to do grievous harm upon the deceased.”

31. Concealing the body of the deceased in the forest after committing the murder is an express evidence of malice aforethought on the part of the accused person.

32. In conclusion, this court find that the prosecution has proved its case beyond reasonable doubt. The accused person is found guilty of the offence of murder and convicted in accordance with Section 322 of the *Criminal Procedure Code*.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,
THIS 31ST DAY OF OCTOBER 2023 AT 3.45 PM**

HON. LADY JUSTICE A. ONG’INJO
JUDGE

In the presence of: -

Ogwel- Court Assistant

Mr. Ngiri for the State

Mr. Magolo Jared Advocate for the Accused Person

Accused persons present in person

HON. LADY JUSTICE A. ONG’INJO



JUDGE

Mr. Ngiri: I don't have previous records

Mr. Magolo: I pray for time so that Paul Magolo can submit on mitigation

Order: Mention on 13.11.2023 for mitigation, victim impact statement and sentence.

HON. LADY JUSTICE A. ONG'INJO

JUDGE

10.2023

