



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT GARISSA**

**CRIMINAL CASE NO. 15 OF 2012**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**NGALU KAVITA.....ACCUSED**

**JUDGEMENT**

1. The accused Ngalu Kavita stands charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence being that on 16<sup>th</sup> July 2012 at Mororo Trading Centre, Madogo within Tana River County murdered Stella Munanie.

2. He denied the offence and in proving the case the prosecution has called several witnesses.

3. PW1 was Jane Mbuli Abdalla a business woman who sells porridge in Garissa Town, but was previously employed by Stella Munanie to sell vegetable at Mororo. She came from Kitui and knew Stella for many years. She also knew Ngalu Kavita the husband of Stella.

4. She stated that on 16<sup>th</sup> July 2012 at 7 am she was called by Stella to go to her kiosk as she went to purchase vegetables and returned at 9 am. The witness then asked for permission at 11 am to go and wash clothes and when she came back she met Josephine Mwikali at 4 pm. She peeled potatoes to make chips as she was told that Stella had gone to the chief. She was there until 6 pm when Ngalu the husband of Stella came and met Stella sitting outside the place where they sold chips and vegetables. Ngalu then suddenly held Stella and stabbed her twice, first in the middle of the chest and then on the side. There was another man at that place. Stella got a chance and ran away and Ngalu also ran away leaving the witness, the other man and Mwikali at the scene. Shortly thereafter the man ran away and people came and advised them to close the kiosk. At around 8.30 pm, a woman by the name Njeri informed her that Stella had died. It was her evidence that Stella did not indicate to her that she had any problem with her husband and also did not also tell her why she went to the chief. She identified the accused in court.

5. In cross-examination, she said that the kiosk was made of temporary structures and that peak business hours were between 1 pm upto 6 pm. She maintained that Stella sat outside the kiosk. She stated that she was talking to a man who was a customer just near Stella. She maintained that she saw Ngalu stab Stella. She stated that Ngalu ran towards the same direction as Stella and did not know if the two entered Kirindara Bar. She said that Stella and Ngalu lived well. She maintained she did not know the reason why Stella was stabbed and confirmed that she attended the burial.

6. PW2 was Racheal Mwendu who knew Stella and were friends. She also knew Ngalu Kavita. She stated that on 16<sup>th</sup> July 2012 at 7 pm while at Kirindara Bar selling at a butchery someone knocked at the rear door and entered holding her chest. She found that it was Stella Munanie who ran and held an old woman who was sitting by the name Kakuthu. The old woman screamed and the witness went to separate the two but was not able to do so and she called a man called Musomba who held Munanie by the neck. By that time, Munanie was moving from one side to another. When they laid her down she started stretching her hands and legs and died. They then closed the door of the bar and the butchery and called the Assistant Chief on phone who came with the police at 9 pm and took the body. She stated that Stella did not say a word.

7. In cross-examination, she saw the deceased at 7 pm at the bar. She said there were few customers about 4 in number and that Stella came through the small back door. She stated that on that day she did not see the accused. She also did not examine Stella for any injuries. She said that the customers ran away.

8. PW3 was Dr. Hafsa Wanja of Garissa County Referral Hospital. She testified with respect to the postmortem report prepared by Dr. Noor Abbas a colleague with whom she was familiar and who was pursuing post graduate studies at the University of Nairobi.

9. The deceased was Stella Munanie. The clothing was soaked with blood with a torn blouse. She was a female aged between 30 and 35 years of average body. She had a penetrating wound on the right high and another wound on the left arm and another wound on the left shoulder. There were also two stab wounds and a wound on the right side of the back. Cause of death was excessive bleeding leading to shock. She produced the postmortem report as exhibit.

10. In cross-examination, she said that she was not able to say if somebody else had stabbed the deceased, but maintained that the postmortem report was that the deceased had five stab wounds.

11. In re-examination, she said that postmortem report prepared by a person who saw the body.

12. At this stage, the Prosecuting Counsel stated that there were other witnesses but who would repeat the evidence that was already tendered. One witness called Muthee Musomba was insane. He thus closed the prosecution case.

13. When the accused was put on his defence, he tendered sworn testimony and said he was 50 years old and married with seven children. He was a mason and his wife for 25 years was Stella.

14. According to him, on 16<sup>th</sup> July 2012 he went to work, left his wife in the house. He worked till 5 pm at Soko La Ngombe and was paid at 6.30 pm and left for home. ten metres away from his home he met people and asked what the matter was and they said in Kiswahili "this is her husband" and he was arrested and taken to Garissa Police Station. Later he learnt that his wife had died. He stated that he did not have any disagreement with his wife that morning when he left. He said the allegation of murder against him was merely suspicion as he had no reason to kill his wife.

15. In cross-examination, he denied knowing Jane Abdalla whom he saw in court. He did not know that Jane did business near his wife's kiosk. He maintained that he came back home at night. He also denied that he came back at 6.30 pm. He denied disappearing after the incident.

16. In re-examination, he said that it was not necessary for him to know everybody who knew him.

17. This is a case of murder and the prosecution is duty bound to prove all the ingredients of the offence beyond reasonable doubt. The accused is not required to prove his innocence. See the case of **Leonard Aniseth vs Republic [1963] EA 206**.

18. The ingredients of the offence of murder are firstly whether the deceased died. Secondly, whether the death was unlawful. Thirdly, whether the death was caused by the accused person. Fourthly, if the death was called by the accused person, whether it was caused with malice aforethought.

19. Did the deceased die" The prosecution evidence is that the deceased was stabbed at Mororo and ran to a nearby bar and collapsed and died without saying a word that evening before 7 pm. The body was taken to Garissa General Hospital and a postmortem conducted and the cause of death established as shock due to excessive hemorrhage. The defence of the accused was that he did not know that the deceased died or what caused her death. He does not deny however that the deceased died. In my view, the prosecution proved beyond any reasonable doubt that the deceased died of excessive hemorrhage due to stab wounds.

20. Was the death unlawful" From the circumstances and the evidence tendered in court, there is no other conclusion to be reached other than that the death of the deceased was unlawful. There was no lawful reason why she should have died the way she died.

21. Did the accused cause the death of the deceased" The only evidence on this issue is that of PW1 Jane Mbuli Abdalla. She claimed to be an eye witness who knew both the deceased and accused. No other witness was called to testify on this. The

investigating officer also did not testify in court. The chief to whom the first report was made also did not testify. The accused said in his sworn defence that he did not know PW1 and that he went home later that night and was arrested before reaching his home. He denied being at the scene at the time of the incident.

22. Having considered all the evidence on record, and the detailed testimony of PW1 and the fact that she said that the incident occurred in the early slightly before 9 pm, I have no doubt that the evidence of this single witness is believable and I believe the same. She had no reason to implicate the accused maliciously; she did not have anything to gain by that. In my view, the defence of the accused person about his whereabouts at the time of the incident was an afterthought. I find that the accused stabbed and killed his wife the deceased.

23. Was the death caused with malice aforethought" Malice aforethought is defined under section 206 of the Penal Code. It is an intention to cause death or do grievous bodily harm. Everybody is presumed to intend the natural consequences of his acts. The five stab wounds on the deceased were certainly meant to kill her. I have no doubt about that in my mind. I thus find that the death of the deceased was caused with malice aforethought.

24. Consequently, I find that the prosecution has proved case of murder against the accused person herein beyond any reasonable doubt. I thus find him guilty of murder contrary to section 203 as read with section 204 of the Penal Code and convict him accordingly.

**Dated and delivered at Garissa this 19<sup>th</sup> day of December, 2018.**

.....

**George Dulu**

**JUDGE**



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