



THE SUPREME COURT OF KENYA
RUTH WANJIKU KAMANDE Vs REPUBLIC
PETITION NO. E032 OF 2023
DATE OF JUDGMENT: 11TH APRIL 2025

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Supreme Court or any member of the Court.

Orders: The Petition of Appeal is dismissed.

In the year 2015, the appellant was charged with murder contrary to Section 203 as read with Section 204 of the Penal Code CAP 63. The particulars of the offence were that: on the 20th day of September, 2015 at Buruburu Estate within Nairobi County the appellant murdered Farid Mohamed Halim (hereinafter “*the deceased*”), who at the time was in a relationship with her, following an altercation between them.

In a Judgment delivered on 31st May 2018, the High Court determined that it had been established beyond reasonable doubt that the appellant had formed the intention to cause grievous harm or death of the deceased. The court found that the appellant had stabbed the deceased 25 times all over the body, not in a frenzy, but deliberately and intermittently indicating that her action was calculated to inflict pain and cause death. The court therefore concluded that the appellant’s actions were driven by malice. Consequently, the court was satisfied that the charge of murder had been proved beyond reasonable doubt, and proceeded to convict the appellant, sentencing her to death.

Dissatisfied with the outcome, the appellant appealed to the Court of Appeal. In affirming the decision of the High Court, the Court of Appeal concluded that the deceased’s death was caused by the appellant’s actions. That based on the nature of the injuries, it was evident that the appellant intended to cause death. Hence, the court held that the offence of murder, including the element of malice aforethought, had been proved beyond reasonable doubt.

Aggrieved by the Court of Appeal’s decision, the appellant successfully applied to the Court of Appeal for leave to appeal to the Supreme Court on the ground that the intended appeal raises matters of general public importance. The appeal at the Supreme Court was considered on the basis of the following issues:

- (i) *The applicability, standard of proof, burden of proof and guiding principles for the doctrine of the battered woman syndrome as a defence.*
- (ii) *The applicable standard and burden of proof in a self-defence plea and the consequences thereon once the accused provided prima facie circumstantial evidence of their plea.*
- (iii) *The applicable reliefs.*

Before determining the issues, the Supreme Court emphasized the need for the Court of Appeal to identify the specific issues or points of law, as opposed to making a broad and general finding, as it did, in certifying this appeal. The Supreme Court noted that once the Court of Appeal has certified that a point of law of general importance is involved and leave to appeal is granted, the jurisdiction to hear the appeal is established. The Supreme Court's decision on the issues on appeal is as follows:

1. **Issue 1:** The Court held that the battered woman syndrome has not attained the status of a stand-alone defence and it has to be raised in aid or as an extension of one of the existing legal stand-alone defences: self-defence, provocation or temporary insanity. However, the courts cannot singularly elevate the battered woman syndrome to a stand-alone defence of itself, as to do so would, amount to usurpation of legislative mandate bestowed upon Parliament under our Constitutional architecture.
2. Furthermore, the Court held that where a party seeks to rely on the battered woman syndrome during trial, it should be raised at the earliest opportunity, in the same manner as any other defence. This does not prevent a party from raising it during mitigation upon conviction or prevent the court from admitting additional medical evidence at an appellate level, in rare and exceptional cases. The Court, however, underscored that it should not be left to the court to infer the existence and applicability of the battered woman syndrome from the facts and evidence adduced before it.
3. **Issue 2:** The Court determined that when the defence of self-defence is pleaded in connection with battered woman syndrome, the standard of proof must be considered within the context of the legal standards applicable to defences relied upon by an accused person. Specifically, the burden lies with the defence to establish not only the existence of battered woman syndrome but also the extent to which it is applicable to the offence in question. Therefore, a tailored case by case approach remains the most appropriate for the trial or appellate courts below.
4. **Issue 3:** The Court held that, since the issue of battered woman syndrome was only introduced during the certification of this appeal before the Court of Appeal, it had not been adequately raised and addressed by the courts below. Additionally, at no point during mitigation did the appellant mention being in an abusive relationship with the deceased. Due to that, this syndrome could not be considered and inferred as part of her claim of self defence and or provocation, which were the defences she raised at the trial.
5. As a result, the Court found that the clarification and development of the law on the battered woman syndrome would best be achieved from the consideration of the facts in an appropriate matter; the testimony of victims and witnesses including the specialist analysis by expert witnesses; and the interpretation and application of laws and legal principles by the courts, before the matter could be considered ripe for final determination at this Court.

Accordingly, based on the above findings, the Court made the following consequential orders:

1. ***The Petition of Appeal dated 6th November 2023 and filed on 7th November 2023 be and is hereby dismissed.***
2. ***There shall be no order as to costs.***
3. ***Security for costs in the sum of Kshs. 6,000/- deposited by the appellant be refunded.***