



**Republic v Wanene (Criminal Case 20 of 2015)
[2024] KEHC 8049 (KLR) (26 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 8049 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE 20 OF 2015**

**J WAKIAGA, J
JUNE 26, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

JULIUS MUCHIRI WANENE ACCUSED

JUDGMENT

1. The accused was charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of which were that on the 23rd day of April 2015 at Muruka trading Centre, Kandara Sub County within Muranga County, murdered Michael Muturi Nyoike.
2. He first appeared in Court on the 12th day of May 2015 before Waweru J and on the 20th day of July 2015, he entered a plea of not guilty and after several false start at hearing, on the 5th June 2017 his trial commenced before Waweru J who heard and recorded the evidence of two prosecution witnesses, that is to say PW1 and PW2 before proceeding on transfer.
3. On the 8th day of February 2022 Kimondo J complied with the provisions of Section 200 of the *CPC* and proceeded to record the evidence of PW3 upon which the prosecution closed their case on the ground that they were unable to procure other witnesses.
4. By a Ruling thereon dated 19th September 2023 having reviewed the evidence on record, I placed the accused on his defence who proceeded to give unsworn statement in his defence.
5. For record purposes, I must day that I did not have the advantage of hearing and seeing the three prosecution witnesses but have reviewed their testimony on record for purposes of this judgement.



Prosecution Case

6. PW1 Denis Kahe Nyaike testified that he knew the deceased who was a mechanic at Muruku Trading Centre and was popularly known as Kaingo, the accused who he also knew used to assist him. On the 23rd April 2015, he was assisting his mother at the grocery store while the deceased was repairing vehicles across the street some twenty to thirty meters away. The accused was at that time sitting near the shop, he rose and met the deceased who was passing by and he heard the accused demanding money from the deceased saying that he wanted to go to the nearby bar.
7. It was his evidence that he heard the deceased telling the accused to wait for him to finish repairing the motor vehicle he was working on and then he would give him the money, to which the accused responded that he would not wait any longer. The deceased then stated that he would borrow some money from elsewhere to pay, upon which the accused hit him on the right cheek before removing a knife from the right side of his waist and stabbed the deceased on the neck causing the same to fall down. The accused then put the knife in a white polythene bag and then ran away.
8. After ten minutes the police came in their motor vehicle. In the meantime the accused was arrested by some people who brought him back to the scene and started beating him up before the police rescued him and took him away. It was his evidence that the accused and the deceased were about two meters from the shop and he was able to see them well.
9. In cross examination he stated that he saw the accused stab the deceased with a knife with a metallic handle and that he knew both the accused and the deceased very well and that both of them used to drink alcohol and that the accused looked like he was drunk and that he saw the accused stab the deceased.
10. PW2 Mary Njoki Njoroge testified that she knew the deceased as Kaingo. She also knew the accused but not by name as she used to see him passing by the shopping centre. It was her evidence that on the material day while at the shop dicing and packaging vegetables, he saw a man lying besides the road bleeding, she called Mama Peter who was running an Mpesa kiosk who came and advised them to call the police which they did who came to the scene which had attracted many people. In cross examination he said that the deceased was lying on his back and not talking. She did not see the accused.
11. PW3 CI Charles Mwasabu stated that he was at the time the OC Crime at Kandara Police Station. He was instructed to go to the scene where he found rowdy members of the public lynching the accused whom they rescued. There was a body at the scene which they took away together with the accused. He then conducted investigations which established that the accused was a friend of the deceased who was a mechanic at the centre. On the material day the deceased got some Kshs.100 from the owner of a welding shop and was going for lunch when he met the accused, who confronted him demanding some money.
12. It was his further evidence that the accused started to assault the deceased insisting that he had to get the money. He then drew a knife from his wrist and stabbed him on the neck before picking up the knife and running away to a muguka base where he was arrested from by the members of the public, who started to lynch him and that he established that the motive was about the money owed to the accused by the deceased. He attended the post mortem examination and produced the report thereon.
13. In cross examination he stated that the accused and the deceased used to work together at a mechanic yard and were drinking friends and that the accused who looked alcoholic was seeking money to buy alcohol but did not establish whether he was drunk when he attacked the deceased.



Defence Case

14. The accused stated that he was coming from church having been with the deceased who he was working together with in the morning, drinking from 10.00 am and that after that time he did not know what happened, neither did he know how he was arrested. He only found himself in the police cells where he was told that he had killed someone. He did not know when he left the deceased who was his friend and that they did not have any grudge between them.

Submissions

15. At the close of the defence case, the accused filed submissions where it was contended that the offence of murder was not established since the accused did not cause the death of the deceased intentionally as he did so in the state of total inebriation into the state of total black out and that the defence of intoxication under Section 13 of the *Penal Code* was available to the accused as was stated in the case of *Republic v Nickson Peter Sadra* [2020] eKLR.

Determination

16. For the prosecution to sustain a conviction on a charge of murder, all the three elements of the offence, that is (1) the fact and the cause of death (2) whether the death was caused by unlawful act or omission of the accused and (3) with malice aforethought.
17. The fact and the cause of death was not disputed throughout the course of the trial. PW1, PW2 and PW3 all confirmed the fact of the death. The cause of death was confirmed through the evidence of PW3 who produced the Post mortem report confirming that the cause of death was severe internal and external haemorrhage secondary to penetrating neck injury. From the evidence on record I find and hold that the fact and the cause of death was proved beyond reasonable doubt.
18. The accused was positively identified and placed at the scene by PW1 who knew him by name and the fact that he used to assist the deceased at the repair yard. He had seen the accused sitting near the shop and was able to positively identify him at the scene. This evidence was corroborated by PW3 who was called by PW2 to the scene where he found the accused having been arrested by members of the public who were buying for his blood. I therefore find and hold that the death was caused by the accused and nobody else.
19. The final issue is whether the accused had malice aforethought. As submitted by the prosecution malice aforethought may be established by the nature of the weapon used and the part of the body where the injuries are afflicted. In this case the evidence available is that the accused demanded some money from the deceased who offered to borrow some but the accused could not hear the same. I have also looked at the conduct of the accused soon after the commission of the offence, he put the murder weapon in a bag and fled from the scene. The said murder weapon was never recovered leading to an irresistible conclusion that the same disposed of it before he was arrested, thereby pointing to a guilty mind.
20. The accused put forward a defence of intoxication, but the evidence tendered by the prosecution shows that he knew what he was doing and was not so intoxicated so as not to know what he was doing and or that it was wrong. The evidence of PW1 clearly shows that the accused knew what he was doing and would therefore dismiss the defence of intoxication.
21. It follows that the prosecution proved beyond any reasonable doubt all the elements of the offence of murder and consequently find the accused guilty of the murder and convict the same accordingly and it is ordered.



DATED, SIGNED AND DELIVERED AT MURANGA THIS 26TH DAY OF JUNE 2024

J. WAKIAGA

JUDGE

In the presence of;

Accused present virtually

No appearance by Mr. Mbuthia

Jackline – Court Assistant

