



REPUBLIC OF KENYA



**Republic v Ndegwa (Criminal Case 15 of 2018)
[2022] KEHC 12887 (KLR) (29 July 2022) (Judgment)**

Neutral citation: [2022] KEHC 12887 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE 15 OF 2018**

**A. ONG'INJO, J
JULY 29, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

SAMMY RONALD NDEGWA ACCUSED

JUDGMENT

1. The accused Sammy Ronald Ndegwa is charged with offence of murder contrary to Section 203 as read with Section 204 of the *penal code*.
2. Particulars are that Sammy Ronald Ndegwa on the 7th day of April 2018 at around 08.00hrs at Vikobani area of Miritini, Jomvi Sub-County within Mombasa County murdered Hamisi Said Nyawa Nyota.
3. Eleven Prosecution witnesses testified in support of the charge against the accused and this court found he had a case to answer for the offence of manslaughter and not murder.
4. Brief facts of the case are that PW 1 saw the deceased follow the accused and push him to the ground. That they struggled and the accused over powered his brother produced a knife from his waist and stabbed him on the chest. That he then removed the knife and walked away back to their house. That the deceased was taken to Port Reitz Hospital where he died and was buried.
5. PW 1 said that accused disappeared from home for one week and when he returned report was made to Chief and police and he was arrested. The the accused stayed in custody for one week but then was released and he started threatening his agemates on the neighbourhood threatening to beat them. That when he started chasing his sister Hanifa she was rescued by young people in the neighbourhood and locked her in a neighbours house whereas accused went to lock himself in the house.



6. That members of public wanted to beat the accused and police went to remove him from the house and took him to their vehicle while firing gunshots in the air to scare people who were throwing stone and 2 people died of gunshot wounds.
7. PW 1 said he didn't know why the deceased was chasing the accused as he didn't know if they had disagreed. He said that on 6/4/2018 he told the deceased that his brother the accused had threatened Babu three times and that the deceased promised to go and tell tok to him to change his ways. PW 1 said the accused went to abandon shop and started slapping the barber.
8. PW 2 testified that on 7/4/2018 between 7.00am & 8.00am a young man who was passing by told him and a friend to go and see the accused was fighting with his brother. PW 2 said he proceeded to scene and found the accused fighting his brother Hamisi. That accused pulled a knife from the rights side of his house and stabbed Hamisi on the leftside of the chest once. That he pulled the knife and ran away.
9. That the deceased was carried on a bodaboday and taken to Light House Hospital but he was not treated. That they looked for a motorvehicle and took Hamisi to Hospital but after about 3 hours they received report that Hamisi had died.
10. In cross examination PW 2 said he heard the accused and his brother quarreling. He said he had not heard them quarrel before that day. He said that the deceased was on top of the accused and he saw the accused stab the deceased.
11. PW 3 Benedict Jefwa testified that he knew the accused and his brother the deceased herein as his neighbours in Miritini. PW 3 testified that on 7/4/2018 he was asleep when he was woken up by screams coming from outside his house. He rushed to the scene and found the deceased holding his chest & blood was coming from the chest. That he took the deceased to Light House Hospital using a bodaboda but the hospital could not manage the deceased and they stopped a vehicle that took the deceased to Port Reitz Hospital in company of Pastor Angore and the deceaseds pesons mother. That on arrival at the hospital after 30 minutes they were told he had died. They went to Changamwe Police Station to report in order for the body to be accepted at the mortuary. Police accompanied them to hospital and to where incident took place. PW 3 said he didn't witness the incident and he didn't inquire what happened.
12. PW 4 Fatuma Kazungu Muinde who was operating a food kiosk in Miritini area testified that on 7/4/2018 her neighbours children ran to her while shouting that someone was being killed. That she called other female neighbours to accompany her to the scene and they met the accused running while holding a knife and they ran back to go and hide in the house. That when the accused had passed they went to the scene about 5 minutes walk away and found Hamisi was lying down restless and he was taken to hospital using bodaboday. Later she learnt Hamisi had died and police went to scene & carried out investigations.
13. PW 5 Asha Hamisi testified that she was away when the accused left while armed with a knife and his sister woke up Hamisi the deceased to follow him as he had mental problem since 2014 when he was in Form 3. PW 5 said she took her son to Port Reitz Hospital for treatment. She said when Hamisi followed his brother the accused to restrain him from straying due to mental illness the accused stabbed him. PW 5 said she found when the deceased was being taken to hospital but he was pronounced dead on arrival. She said the OCS Changamwe helped to trace accused at a wedding. That is accused persons father who traced him Tudor and took him to the police station.
14. PW 6 Pastor Angore testified that on 7/4/2018 he was on his house in Miritini when he heard noise along the road. When he got out he found a child had fallen and a crowd had gathered. He said he identified the child as Hamisi and he was bleeding from the chest. PW 6 said he learnt Hamisi had been



- stabbed by the brother. He said he and Mzee Ngari decided to take Hamisi to Port Reitz Hospital but after 10 minutes they were told the boy had died. That the deceased person's mother was called and body taken to the mortuary and the next day Postmortem was done and body was buried.
15. PW 7 testified that on 5/4/2018 the accused went to where he was selling Muguka and accosted him and threatened to teach him a lesson. He said he was not aware that the accused was mentally sick.
 16. PW 8 Domtilla Scholastica Shally testified that she didn't know the accused had mental problems.
 17. PW 9 Dr. Nuzla Ali produced postmortem report prepared at Coast General Hospital by Dr. Malika who was of the opinion death was caused by haemorrhagic shock secondary to penetrating chest injury. PW 9 Bunti Saidi Mwangolo testified that she was Chief of Miritini Location and that on 4/4/2018 Ali Kassim complained to her that the accused threatened his life. That on 7/4/2018 she reserved report from Mzee Kagani that accused had stabbed his elder brother. PW 9 made phone call to police to take action. She said that shortly thereafter she learnt the victim had died and the accused was arrested and charge. PW 9 said she went to scene and found a pool of blood.
 18. PW 10 P.C. Ledisha Cheruto escorted the mother and sister of the accused to identify the body of the deceased for Post-mortem on 9/4/2018 Ex. P1. That on 17/04/2018 she recorded statement.
 19. PW 11 Sergeant Nyamvula Mwero investigated the murder & preferred charge against the accused. She said she took over investigations from P.C. Stephen Kakai on 18/05/2018 on instructions of her boss. PW 11 visited scene on 17th June 2018 & interrogated the Chief and she led PW 11 (Investigator Officer) to scene where she draw sketch plain and took over the statements. She established witnesses were reluctant to record statements as the mother of the deceased who was also the mother of the accused warned them. That when she promised to place them under witness protection she recorded their statements.
 20. PW 11 testified that the deceased had an altercation with the accused and when accused left the house while armed with a knife he pushed him and that is when he was stabbed to death. PW 11 said that the accused had targeted his friend Ali Panga but stabbed and killed his brother when he intervened to restrain him.
 21. The investigating officer said that when the accused was arrested he was escorted to hospital to establish if he was a mental patient but there were no documents.
 22. PW 12 P.C. George Malungu visited scene on 7/4/2018 following report that someone had been stabbed and found a crowd gathered but the assailant and victim were not at the scene. That the victim had been rushed to Port Reitz Hospital whereas suspect whom they learnt suffered from mental incapacity had escaped. He said he didn't see the deceased person's body after he died as it was taken to Coast General Hospital Mortuary.
 23. Accused was placed on defence for offence of manslaughter and he gave sworn statement and said that he was a form 3 drop out. He said he dropped out due to lack of fees. He said he used to go to Port Reitz Hospital to get medicine for treatment of mental health but that he stopped taking the medicine. He said he was staying with his brother the deceased herein with their mother and other siblings. He said he didn't have any differences with the deceased and they lived peacefully. He said that he also didn't have a problem with Ali.
 24. He said that on 7/4/2018 he was going to the farm which has mangoes, sugarcane & coconut trees but he didn't tell his brother where he was going. He said he didn't know what his brother thought and he followed him and suddenly jumped on him and they fell and the deceased fell on the knife which he had and it stabbed him. He said he didn't threaten Babu. He said he left the knife at the scene.



25. In the submissions defence counsel pointed out that issues of accused persons mental stability and health was mentioned by PW 5 & PW 13 as well as the accused person and in the Pre-bail Report. It was submitted that the accused had stopped taking medicine and was acting erratically and that after he had committed the offence his conduct was not compatible with those of someone who understood the consequences of his actions. That he went to a wedding and to his father's house in Tudor later on the same day.
26. It was submitted that accused cannot be held criminally liable where his actions and/or omission occurs independently of his wife. The holding in *Leonard Mwangemi Munyasia vs Republic* [2018] eKLR relied on where it was held:-

“It is a rule of universal application and of Criminal responsibility that a man cannot be condemned if it is proved that at the time of the offence he was not a master of his mind...”
27. The Rule in Mc Naughten Case (1843) 10 CI & Fun 200 was also relied on to support the position that accused had mental incapacity and that the defect in his reason that the knife he had could cause grievous harm or even death was caused by the disease of the mind that he had labored with since 2014. It was also submitted that at the time of offence the accused had been off his medication and thus exacerbated the effect of the disease.
28. It was submitted that the accused suffered a disease of the mind that impaired his ability to understand the effect of his action on the consequences thereto.
29. From the evidence on record for the prosecution and from the accused person sworn statement in defence the issues for determination are:-
 - i. Fact of death
 - ii. Cause of death
 - iii. Whether death caused by unlawful act
 - iv. Whether the unlawful act committed by the accused
 - v. Whether the unlawful act was committed with malice aforethought
30. It is not in dispute that Hamisi Said Nyawa Nyota died. It was also not in dispute that his death was caused by hemorrhagic shock secondary to penetrating chest injury from a stab wound.
31. There is overwhelming evidence that it is accused who had the knife that inflicted penetrating stab wound. It is also evidence that this happened when the deceased pursued the accused person when he left the house armed with a knife and it was suspected he was going to attack Ali as he had threatened on 3 previous occasions. The deceased therefore pushed him to restrain him from harming the said Ali.
32. The unlawful act was therefore inflicted on the deceased person without the accused person ill will because it is not the deceased who was armed at but a 3rd party. Whether the accused persons wrong intention was armed at a 3rd party, there is evidence from P.C. George Malungu PW 12 that he learnt the accused person had mental incapacity.
33. PW 5 the accused person's mother also said the accused person had mental incapacity. The probation officers pre-bail report dated 24/09/2018 said accused dropped out of school in Form II due to mental health which was treated and after being stable he began work as a casual labourer. No document was however, produced to prove the accused was treated at Port Reitz Hospital for mental illness and the



Investigating Officer said on arrest accused was escorted to Port Reitz Hospital but his records were not recovered.

34. PW 1, PW 2, PW 3, PW 4, PW 6 who know accused didn't say he had any mental incapacity.
35. PW 7 who was a friend of the accused and whom the accused had threatened said he didn't know accused had any health problem and yet he had been his friend for over ten years.
36. PW 8 who had known the accused since childhood also said that she was not aware if he had mental health problem. Before being charged the accused was also presented at Coast General Hospital for mental assessment and medical report by Dr. Joseph Jureba dated 24th June 2018 indicated he was found to be a going man of normal mental status and hence fit to plead.
37. Although this court made a finding in the ruling for a case to answer that the accused person had poor mental health, a thorough perusal of the Court Record and Medical Report established otherwise.
38. This court therefore finds that the accused has been proved to be guilty for the offence of manslaughter and he is convicted under Section 322(1) *Criminal Procedure Code*.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 29TH OF JULY 2022

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of: -

Ogwel- Court Assistant

Mr. Ngiri for State

Accused – Present in person

Ms. Oyier Advocate for accused

Court

Mention – 15/09/2022 for Victim Impact Statement & Mitigation.

Hon. Lady Justice A. Ong'injo J

29/07/2022

