



**Republic v Benzigo (Criminal Case E002 of 2021)  
[2022] KEHC 12885 (KLR) (28 July 2022) (Judgment)**

Neutral citation: [2022] KEHC 12885 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CRIMINAL CASE E002 OF 2021**

**A. ONG'INJO, J  
JULY 28, 2022**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**JAJI BENZINGO ..... ACCUSED**

**JUDGMENT**

1. The accused Jaji Benzigo was arraigned in court for the offence of murder contrary to section 203 as read with section 204 of the *penal code* cap 63 Laws of Kenya.
2. Particulars are that Jaji Benzigo on 11<sup>th</sup> day of February 2021 at Mwele village Mwaluphamba Location within Matuga sub-county within Kwale County murdered Ramadhan Hashim.
3. The prosecution's case was supported by the evidence of PW1 the chairlady of Mwele village. She received a call that accused had stabbed a young man and he had died. She proceeded to the scene and made a phone call to the Assistant chief who called the police station and reported the death. She testified that she found the deceased lying on the ground while facing up. The police collected the body and took to the mortuary. The following day in the morning when her child was going to school at 6 am she opened the door to her house and found accused standing at her doorstep. Accused told her that he had stabbed a young man and he wanted her to call the police for his safety. She made a phone call to the Assistant chief who sent people to apprehend the accused and he was taken to police station. She identified accused on the dock as the one who stabbed the deceased. She said accused didn't have a bad reputation.
4. PW2 testified that while on the way to the coffee kiosk on 11<sup>th</sup> February 7.30 pm he heard a noise about 40 meters away. He said it was the voice of Hashim crying and saying, 'Jaji amenuiwa.' PW2 said that he saw Ramadhan was holding the left side of his shoulder which was bleeding and was running towards



the chairman's place. That he followed the deceased who fell. PW2 went to report to PW1 and made phone calls to the Assistant chief and police. The deceased was taken to Kwale Hospital mortuary.

5. PW3 Omar Momasare said that on February 11, 2021 at 7.00 pm he was at his place of work when (accused), Hamisi and Zele went to drink.

That accused ordered for 3 bottles of palm wine and gave him 1000/-

That before they finished the 3 bottles the accused ordered for another 2 bottles. That before he could take the two bottles that accused had order he had Rama cry out, '*mjomba ..... nimechomwa kisu na Jaji.*' That when he got out he didn't find any one but he saw blood all over the table and three bottles on the table and blood stains.

That PW3'S brother came and told him that someone had been stabbed. He said the person who was stabbed also ran away to go seek help.

1. That when they followed they found accused had fallen near chairman's home. That they made phone call to Assistant chief and the police came and collected the body and took it to Kwale Hospital mortuary. PW3 said that he went to record a statement at the police station. According to PW3 the deceased didn't heed when the Accused told him not to take his palm wine. PW3 said the deceased cried calling his uncle had stabbed him. PW3 said that he didn't see Jaji stab the deceased. He said when he served accused palm wine the accused and deceased were not quarreling. That everyone escaped to safety when the deceased screamed that he had been stabbed. PW3 said he didn't see Jaji, Hamisi, Rahma and Zele run away. PW3 said that it is not easy to kill because of palm wine. He said he had known Jaji since his childhood and his reputation was not bad
2. PW4 a palm wine tapper and dealer jointly operated the wine club with PW3. He said that he had stepped outside to talk to Mzee Banya when he heard the deceased scream and say that Mzee Jaji had stabbed him. That the deceased ran towards the chairman home but fell on the way and died. That police went to scene and collected the body. That when he was interrogated he explained what happened. That he said the deceased hailed from their village while accused came from the neighboring village. He said he didn't hear accused and deceased quarrel and he didn't see the accused stab the deceased. In cross examination PW4 said apart from the accused and deceased there were no other customers at the club. He said he knew of no complaint against the accused.
3. PW5 Banya Mwaluwa Kaluma testified that on 11<sup>th</sup> Febuary2021, when he was at home in the evening a child known as Modi went while crying and told him Jaji had been stabbed Rama. That he proceeded to where Rama had fallen near the stop along the way to chairman's home. That chairman went to scene where crowd had gathered. That chairman called police who went and collected the body and went to Kwale to record his statement.
4. PW6 Mchanga Mwapuza testified that went to Magweni on February 11, 2021 and found Idi and Omar others selling palm wine and soup. That he bought beef and one bottle of palm wine. That while at the club Jaji also ordered and bought 2 bottles of palm wine drinks. PW6 said that the accused found him with the deceased and two other vendors. That when he was coming from the toilet he heard Rama cry out that Jaji had stabbed him on the left shoulder and had ran away. That Rama, started running towards chairman's home and he fell on the way. That he followed Rama and found he was lying in a pool of blood. That he reported to his younger uncle Juma Benzingo and police went and collected body. That he reported to his young Uncle Juma Benzingo, that police went and recorded statement at Kwale police station.



5. PW6 testified that deceased who had ran from scene went and reported to police the following morning. PW6 said the accused who is his father had given the deceased wine to go and sell but he but he didn't remit proceeds of sale namely Ksh 2500/-. PW6 said accused told him that Rama had refused to pay him his money. He said the deceased was nephew to his wife. He testified further in cross examination that he heard Rama cry out, 'Jaji ameniua.' That Idi Mwaseme confirmed to him that accused had stabbed the deceased. He said he suspected the accused stabbed the deceased because of the debt he owned him. PW6 said the accused didn't have a bad reputation in the village.
6. PW7 Juma Mchungu Mwangusa testified that he accompanied the deceased to palm wine club on February 11, 2021, in the evening. He said he was with the deceased and Hamisi. He said that he took soup as Ramadhan and Hamisi took palm wine. That while at the club the accused who is his 2<sup>nd</sup> born brother bought for him 2 pieces of meat. That when his sons came to report that they had been out of solar tokens he left to go home. That after he had taken ugali he went to sleep at 7.30pm. That while sleeping he recorded a phone call from his mother in law who informed him that his brother had stabbed Rama. That he also received a phone call from Mshenga who told him accused had stabbed Rama. The next day chairman called and informed him he was required at kwale to record a statement that when he went to kwale he asked his brother the accused what had happened and he said the deceased owed him ksh 2500 but became violent whenever the accused demanded for the money. PW7 said he was in police vehicle with village chairman Mshenga and accused said he stabbed the deceased because he owned him money. He said he was not aware if accused the deceased deferred while drinking. PW7 said he has known accused since his childhood and he had not heard of him committing crime.
7. PW8 testified that he carried his palm wine home and he left the accused his palm wine home and he left the accused and the deceased among other people at the palm wine club. he said the following day he learnt that jaji had killed rama and he was surprised. He said when he left the accused the deceased were drinking and they were not quarrelling. He said that he was not present when offence was committed. He said he never heard the accused had committed any other crime.
8. PW9 Dr Abdala Mzungu from Kwale County Hospital produced PM report in which it was concluded that the deceased died due to acute hemorrhage.
9. PW 10 the Government Analyst also produced report which examined stains on the kitchen knife and established and established both were human blood which generated similar DNA profile generated from reference blood from the deceased.
10. PW11 PC James Olando investigated and charged the Accused who surrendered to the village chairman and was arrested and escorted to the police station. When placed on defence Accused gave swollen statement and said on February 11, 2021 he went to Mangweni palm wine club and Idi and his brother as well as his son Hamisi. That his son Moi Hamisi bought for him one and a half bottle of palm wine and he had a total of 3 bottles as his younger brother also brought for him. That his younger brother left after one hour followed by his son. That he remained with Iddi and his brother. That he was left with Rama as Iddi and his brother went to tap palm wine. He said Rama was his grandson. That when he remained with Rama, he started a commotion and wanted to beat him. He said he had given Rama Ksh 3000 to cut him poles for building but he had failed to do so since February 4, 2020 and he had even reported to the deceased person's uncle. That the deceased was not happy that he had reported him to his uncle



that when he found the accused at the Mangweni he kicked him and he fell. That deceased held him by the collar and started strangling him. The accused alleged that the deceased threatened to teach him a lesson. That when accused realized the deceased wanted to break his neck and he produced his knife and used it to defend himself, he said he later took himself to the police and admitted that he had stabbed the deceased.

### **Analysis and Determination**

6. In consideration of the prosecution evidence the accused persons defence the court is to determine whether the prosecution was proved beyond all reasonable doubt the ingredients of the offence of murder namely; -
  - a. Facts of death
  - b. Cause of death
  - c. Whether cause of death was unlawful act and omission.
  - d. Whether unlawful cause of death was a committed by the accused.
  - e. Whether the accused was actuated with malice aforethought when committing the unlawful act.
7. It is not in dispute that deceased died after the accused had stabbed him and he served actual vessel that led to acute hemorrhage.
8. All prosecution witnesses testified as to how while they were at the Palm wine club Mangweni the accused stabbed the deceased. The accused admitted that the deceased died when he stabbed him. The act of stabbing the deceased was not lawful.
9. The offence happened at a drinking club. It is obvious accused and the deceased had already taken palm wine which in the view of the court must have influenced their minds and therefore interfered with proper thinking by the accused who ended up stabbing the deceased and resulted into his death. This court finds that in the circumstances this court cannot find the accused person's action was actuated with malice aforethought but rather than he was influenced with drunkenness. This court therefore finds that accused is not guilty of murder but rather manslaughter.
10. Accused person is therefore convicted for manslaughter under section 3.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 28<sup>th</sup> JULY 2022.**

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

**IN THE PRESENCE OF; -**

MS Ochieng Advocate in holding brief for Motuka.

Advocate for Accused.

Ms Kambabga for state.

Accused for present in person.

Ogwell- Court Assistant

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

