



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Wanjiri & another (Criminal Case E004 of 2022)
[2022] KEHC 15664 (KLR) (24 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 15664 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL CASE E004 OF 2022
JR KARANJA, J
NOVEMBER 24, 2022**

BETWEEN

REPUBLIC PROSECUTION

AND

JOHN MBANDA WANJIRI 1ST ACCUSED

SUNDAY ODUOR 2ND ACCUSED

JUDGMENT

1. John Mbanda Wanjiri and Sunday Oduor (accused one and two respectively) are charged with murder, contrary to section 203 read with section 204 of the [Penal Code](#), in that on the night of 27th/February 28, 2022, at Muruka shopping centre, Bukati in Butula, Busia County, with others not before Court they murdered Isaac Ogutu Masiachi (deceased).
2. It was the prosecution case that on the material night the deceased was in the company of his brother Godfrey Odanga Okwero (PW 1) and the two accused when they proceeded to a place called Kadongo and entered an alcohol drinking spot. The deceased and the two accused consumed alcohol and were intoxicated as at the time they reboarded the motor cycle under the control of Godfrey for their return journey back to a place known as Muruka. Godfrey while waiting for the trio did not consume any alcohol.
3. On their arrival at Muruka, the group of four was attacked and assaulted by a group of unknown people who had blocked their motor cycle with a vehicle from which they emerged. In the process, a brawl or fight ensued between the two groups. Godfrey (PW 1) was assaulted unconscious and when he regained consciousness at about 3.00 am shouted for help attracting villagers to the scene. He gave them the telephone number of his neighbor called Collins who arrived at the scene and took him to hospital at Mumias.



4. Alfred Majoni Mbacha (PW 2), was the owner of the ill-fated motor cycle and the employer of Godfrey (PW 1). He also assisted in taking Godfrey to hospital and later embarked on a search of his motor cycle which he learnt had been found in possession of the first accused and taken to a police station. The first accused was previously unknown to him.

The motor cycle was purchased on loan from a credit company whose officer, Josphat Okello (PW 3), and his colleagues tracked the motor cycle using their company GPS and found it at the homestead of the first accused.

5. Sarah Cherotich (PW 4), a Clinical Officer within Busia County undertook a medical examination of Godfrey (PW1) and confirmed that he suffered bodily injuries after being assaulted by a group of people. A medical report from (P3 form) was compiled and signed thereafter.

The incident was investigated by the DCI Butula-Busia through Cpl Paul Ngesa (PW 5), who visited the material scene after receiving the necessary report and found the dead body of the deceased lying on a road side. He arranged for the scene to be photographed after which he oversaw the removal of the body to the mortuary.

6. The officer (PW 5), in the course of investigations gathered that Godfrey (PW 1), another victim of the unlawful act of assault was admitted to a hospital in Mumias. He proceeded to the hospital and interrogated Godfrey (PW 1) who confirmed to him that they had been attacked and robbed of the motor cycle. The officer (PW 5) produced the post mortem from (P EX 4) which indicated that the cause of death was haemorrhagic shock due to liver rapture and after interrogating the second accused who denied being at the scene of the attack, he preferred the present charge against both the first and second accused.

7. Both accused denied the charges. The first accused's defence was that Godfrey (PW 1) was his uncle from whom he hired a motor cycle which took him, Godfrey, the deceased and the second accused to a local pub where they drank alcohol. At about 10.00 pm, they all re-boarded the motor cycle for home but at the request of Godfrey, the first accused took control of the motor cycle and dropped the second accused on the way. He then proceeded to nearby market where he dropped and left the deceased and Godfrey before heading to his home with the motor cycle which he parked at his homestead where it was found by officials from a tracking company.

8. It was then that he (first accused) learnt that Godfrey (PW 1) had been injured and a person had been killed. He confirmed as much and went in search of Godfrey before he returned to his home from where he was arrested and charged after a period of two weeks. He contended that he did not commit the present offence and could not tell what happened to Godfrey and the deceased when he left them at the market area.

9. The second accused's defence was that he was at his home when the deceased called and invited him for a drink with his friends. They all proceeded to a bar and left after a period of time. Thereafter, he was dropped together with the deceased and Godfrey (PW 1) at a market area. The first accused who was riding the motor cycle at the time proceeded with it to his home. He (accused two), Godfrey and the deceased walked on foot towards their nearby home when a vehicle suddenly stopped and its occupants attacked them. He escaped from the scene and went home and on the following day heard screams from the homestead of the deceased.

10. The second accused then proceeded to the home of the deceased and learnt that the deceased had died in hospital. He was then arrested and charged with the present offence which he did not commit and could not tell how the deceased died.



11. The totality of the evidence foregoing indicates that whereas there is no dispute with the cause of death and the fact that it was a result of an unlawful act of assault occasioned to the deceased, what emerged as the crucial issue for determination was whether the two accused were the persons involved in the unlawful act and hence, the death of the deceased.
12. The post mortem report (P EX 4) pointed to a vicious attack upon the person of the deceased which led to not only a rupture of the liver but also collapse of the lungs. It is without doubt therefore, that the assailants had a clear intention of killing and did actually kill the deceased.
13. The two accused were suspected to have been part of the group of people who viciously attacked the deceased and killed him. However, the evidence availed by the prosecution through their key witness Godfrey (PW 1) pointed to the two accused as being part of the victims of the attack and assault rather than being part of the perpetrators of the offence who it would appear were not identified nor apprehended at the scene. It would appear that the first accused was implicated merely because he was found in possession of the ill-fated motor cycle. However, he provided an undisputed and satisfactory account of his possession of the motor cycle.
14. The second accused was clearly implicated simply because he denied being at the scene of the attack if the evidence of the investigating officer (PW 5) is anything to go by.

Basically, the prosecution evidence against the two accused was wanting in as much as it was grounded on suspicion and insufficient or no evidence at all establishing beyond reasonable doubt that the deceased was assaulted and fatally injured by a group of people which included the two accused.
15. In that regard, the defence proffered by each of the accused is reasonably sustainable and by the same token overrules the prosecution's submissions that they were both involved in the offence in favour of their submissions that they were not involved in the offence and were also victims of the same at the hand of strangers or unknown people.

In sum, the prosecution failed to discharge its burden of proof in this case. Consequently, both accused are hereby found not guilty as charged and acquitted of the charge.

Ordered accordingly.

JR KARANJAH

J U D G E

[DATED AND DELIVERED THIS 24TH DAY OF NOVEMBER, 2022]

