



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISII**

**CORAM: A.K NDUNG'U J**

**CRIMINAL CASE NO 3 OF 2020**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JOSEPH SANINGO TIRINGA.....ACCUSED**

**JUDGEMENT**

1. The accused, JOSEPH SANINGO TIRINGA, is charged with the murder of PETER MUNTET ('the deceased') contrary to **section 203** as read with **section 204 of the Penal Code**. According to the information, the accused committed the offence on 27<sup>th</sup> and 28<sup>th</sup> December, 2019 at Mapashi sub-location, Enosaen Location in Transmara West Sub-county within Narok County.
2. A summary of the prosecution case is that on 27<sup>th</sup> December 2019 the accused and the deceased engaged in an argument at Oloolasho bar which ended in the accused being thrown out of the bar. Once the deceased left the bar, the accused beat him with a sharp object and killed him and then proceeded home.
3. On 27<sup>th</sup> December 2019 at 10.00 pm, Francis Olemoi Naisawa (PW1) and the deceased were in Oloolasho bar having whiskey. Shortly thereafter the accused arrived and briefly argued with PW1. The deceased then interjected and the accused threatened the deceased warning him that he would be his next target as he had defended PW1. The accused was then escorted out of the bar on orders of the counterman. Shortly thereafter PW1 left the bar.
4. Jackson Pimba Tirinda (PW3) the accused person's brother recalled that on the material night the accused came back home at 12:00 am. PW3 explained that he shared the house with the accused and 2 others who were not in the house on the material night.
5. On the morning of 28<sup>th</sup> December 2019, PW1 was informed that the deceased had been killed. Moses Katuno Muntat (PW2) testified that the deceased was his nephew and upon receiving information of his death, he went to the scene and identified him.
6. PW3 testified that when he woke up on 28<sup>th</sup> December 2019, the accused had already left. On 29<sup>th</sup> December 2019 the OCS came with police officers from Enosain police station looking for the accused who was a suspect in the murder case. Pw3 testified that upon searching the house, the police officers found the accused's clothes, a Grayish jacket and a shirt with strips of white blue and red. The clothes had blood stains.
7. Inspector John Moroge Kabwe (PW5) testified that on 29<sup>th</sup> December 2019 he conducted a search at accused's home in the presence of PW3. He told court that he found a jacket and a short that had blood stains and wrote an inventory which PW3 testified to have signed. PW5 told court that they learnt that accused had gone to Olalus. John Olbunai Tiringa (PW4) who is also the accused's brother testified that on 29<sup>th</sup> December 2019 the accused was at Olalus at the home of Edward Kasan and was living with his sister. PW4 testified that it was Edward who informed him that the accused was at Olalus.
8. Once the location of the accused was established, PW5 testified that the DCI went and arrested the accused. PW5 then sent the accused's clothes to DCIO Kilgoris for them to send to government analyst.
9. Stanley Korir No. 46201 PCPI (PW6) who was assisted with the investigations testified that he attended the post mortem of the deceased at St. Joseph Mission Hospital and requested the doctor to take blood samples from the deceased for purposes of analysis. He told court that he had also taken blood samples of the accused person. Pw6 testified that he prepared an exhibit memo form on 31<sup>st</sup> December 2019. He told court that he took the exhibits to Kisumu for analysis by the government chemist who was to ascertain if blood on the clothes matched with

samples from the deceased. According to the report dated 16<sup>th</sup> January 2020, the DNA on garments matched DNA profile of deceased but had no match with the DNA of the accused. He also produced a post mortem form showing that the cause of death was severe head injury secondary to trauma from sharp object.

10. The accused gave a sworn statement and was cross examined. He denied committing the offence and stated that on the material day he was not within the locus in quo but was attending a wedding at Kanaan.

#### **ANALYSIS AND DETERMINATION**

11. Under **section 203 of the Penal Code** the offence of murder is defined as follows;

*“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”*

12. The fact of death was not in dispute and the post mortem form was produced by PW6. According to Dr. Mutisya who conducted the post mortem the deceased had 3 lacerations over the right forearm and 17 lacerations over his head and face ranging in depth of 0.5cm to 7cm. Dr. Mutisya noted that both eyes and maxillary sinuses obliterated. The deceased had a left orbital injury that was 7 cm deep and a 6 cm deep nasal injury. On the 2<sup>nd</sup> rib on the left side there was subcutaneous ecchymoses and the left side also had a bilateral lung contusion. He observed 2 deep injuries on the deceased’s head through the cribriform plate and orbital fossa into the cranial cavity. There was an associated fracture of the cribriform plate and orbital bone. Dr. Mutisya formed the opinion that the cause of death was severe head injury secondary to penetrative trauma by sharp object through the cribriform plate.

13. The prosecution is also required to prove beyond reasonable doubt that it was the accused person who committed the act or omission that led to the deceased’s death.

14. There was no direct witness by the prosecution and the prosecution case was entirely based circumstantial evidence. This court must therefore consider whether circumstantial evidence placed before it can support a conviction. In the case of **R vs. Kipkerring Arap Koskel & another [1949] 16 EACA 135**, the court while citing *Wills on Circumstantial Evidence (6th Edition) at P311*, established that:

*“In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt.”*

In the case of **Sango Mohamed Sango & another v Republic [2015] eKLR** the Court of Appeal stated that:

*“There is no dispute that the evidence against the appellants was circumstantial evidence to the extent that the prosecution did not adduce any direct evidence regarding the murder of the deceased. But as has been stated time and again, that in itself does not render circumstantial evidence valueless, because, subject to satisfying well-known conditions, circumstantial evidence is as good as any other evidence and can prove a case with the accuracy of mathematics. At times, its deemed the best evidence ever. (See MUSILI TULO V. REPUBLIC, CR. APP. NO. 30 OF 2013). In SAWE V. REPUBLIC (2003) KLR 364, this Court stated that to pass muster, circumstantial evidence must be incompatible with the innocence of the accused person and incapable of explanation upon any other reasonable hypothesis than that of his guilt and further that for circumstantial evidence to form the basis of a conviction, there must be no other existing circumstances which would weaken the chain of circumstances”*

15. The Court of appeal in **Abanga alias Onyango vs Republic, Cr. Appeal No. 32 of 1990 (UR)** stated;

*“When a case rests entirely on circumstantial evidence, such evidence must satisfy three tests: (i) the circumstances from which an inference of guilt is to be drawn must be cogently and firmly established (ii) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (iii) the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and no one else.”*

16. According the prosecution evidence, the accused had threatened the deceased on the material night and behaved in a manner that caused him to be ejected from Oloolasho bar by the security team working for the establishment. Pw1 testified that he left the deceased at the bar when he left the bar at 10:30 p.m. Despite being removed from the bar, the accused did not immediately go home as Pw3 testified that he arrived home at 12:00 midnight.

17. It can only be inferred that it is the accused person who attacked the deceased after he left the bar as the prosecution witnesses placed the accused who had marked the deceased as a target within the locus in quo. Pw3 and Pw5 both testified that the deceased’s clothes found at his home had blood stains. Pw6 produced into evidence the report of the government analyst who concluded that the DNA generated by the blood stains from the jacket and the shirt match the DNA profile of the deceased.

18. The accused person also in inexplicable circumstances fled his locality after the death of the deceased until his arrest. This is confirmed by PW3 and PW4 who are brothers to the accused who stated that the accused had gone to Olalui.

19. Having considered the prosecution evidence in totality, the only conclusion that can be arrived at is that the offence could only have been committed by the accused and no one else. The defence by the appellant that he was attending a wedding on that day could not displace the case mounted against him by the prosecution.

20. I now turn to consider whether the unlawful acts or omission was committed with malice aforethought. Malice aforethought has been

defined under **section 206** as follows:

***“Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances:***

***(a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;***

***(b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;”***

**21.** In this case Pw1 testified that the appellant had marked the deceased as his target because he had defended PW1. In the circumstances, I am satisfied that the prosecution proved beyond any reasonable doubt that the accused's conduct was backed by malice aforethought.

**22.** In the end, find the accused, JOSEPH SANINGO TIRINGA, guilty of the murder of PETER MUNTET contrary to **Section 203** of the **Penal Code** and I convict him accordingly.

**Dated, Signed and Delivered at KISII this 28<sup>th</sup> day of APRIL 2021.**

**A. K NDUNG'U**

**JUDGE**