



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA

CRIMINAL CASE NO. 8 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

CALISTUS MUCHELE WALIAULA.....ACCUSED

JUDGMENT

The accused **CALISTUS MUCHELE WALIAULA** is charged with the offence of Murder contrary to Section 203 as read with section 204 of the Penal Code.

The particulars of the offence are that **CALISTUS MUCHELE WALIAULA** on the 26th day of April, 2015 at Khelela village in Bumula Sub-county within Bungoma County he murdered **DERICK WANJALA**.

The case for the prosecution is that the deceased was the son of the accused. On 26.4.2015 PW3 Grace Makong'o the mother of the accused and grandmother of deceased made food for the deceased and Faith who ate. She then went to sleep. She then heard the deceased crying. He went there to find out what was happening. The deceased told him that accused had hit him in the abdomen. Accused was called and took the deceased to hospital at 8 p.m. at 9.p.m the accused came back with information that deceased had died. On being cross examined she stated that the deceased told her accused had hit him because the deceased had picked an avocado and had fallen own.

PW4 Peter Nambale the chief of Mukusi location received information that accused had beaten his child and injured him. While on the way going there he met accused carrying the child. Accused told him he had disciplined the deceased for eating an avocado. The chief advised accused to take the child to hospital. On the way to hospital the deceased died.

PW2 Margaret Nasimiyu a neighbor of the accused herd screams form home of accused's mother and she went there. On arrival she found many people including PW3 the mother of the accused, deceased and accused. She was informed that the child had been beaten. They advised accused to take him to hospital but the child died while being taken to hospital.

PW5 Corporal Geoffrey Ngeno the investigating officer received a report of a case of Murder from the OCS IP Ndungu who directed him to go to the scene. On the way they met the assistant chief together with accused who was carrying the child. On observing the child, he saw the child was dead. But did not see any visible injuries. They directed the body to be taken to the mortuary. Accused was arrested because he is alleged to have kicked the deceased on the abdomen because deceased had left pigs to eat crops while he went to pick an avocado.

On 30.4.2015 PW1 Dr. Haron Ombongi performed a post mortem on the body of the deceased where he found there was a rupture of the spleen. He formed opinion that cause of death was due to severe blood loss secondary to ruptured spleen due to blunt trauma. The blood loss was retained in the body explaining the abdomen swelling.

The accused on being placed on his defence elected to give sworn evidence. He testified that on 26.4.2015 he went home at 7 p.m. when he received information that deceased was sick. It is the mother PW3 who told him the child had fallen from a tree. At 9 pm he heard his brother and other people talking outside his house. They took the child who was now unwell to hospital where he died while undergoing treatment. He testified that the child had a history of epilepsy and denied that he kicked the deceased.

The accused is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code.

203. Murder Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.

204. Punishment of murder Any person convicted of murder shall be sentenced to death.

The ingredients of the charge of murder which the prosecution must prove beyond reasonable doubt are:

(a) Proof of the fact and the cause of death of the deceased.

(b) Proof that the death of the deceased was the direct consequence of unlawful act or omission on part of the accused which constitutes the actus reus of the offence.

(c) Proof that the said unlawful act or omission was committed with malice aforethought which constitutes the mens rea of the offence.

a) Fact of and cause of death.

PW1 Dr. Haron Ombongi who performed the post mortem on body of the deceased found that the abdomen was swollen and upon opening it found ruptured spleen leading to blood loss which was retained in the abdomen. He formed opinion that cause of death was due to ruptured spleen caused by blunt force trauma on the abdomen. The death was therefore caused by blunt force trauma, exerted on the abdomen of the deceased. The unlawful act or omission causing the death was blunt force trauma.

Blunt force trauma can be defined as physical injury caused by forceful impact to the body which is caused by or from a blunt object or one which does not have any sharp edges. On the other hand penetrating trauma by contrast involves an object or surface piercing the skin causing an open wound.

The deceased died from blunt force trauma on the abdomen leading to rupture of the spleen. That is the unlawful act or omission that caused his death. Did the accused inflict the injuries on the deceased?

PW2 Grace Nakanjo the mother of the accused and grandmother of the deceased testified that she was with the deceased and a child called Faith when he left them. She then heard the deceased crying. She went to check and upon inquiry from deceased told her that it is accused who had beaten him because he had picked his avocado. He told her accused had hit him on the abdomen. She sent for accused to be called and accused took the child to hospital. Upon cross examination she testified that deceased informed her it is accused who had beaten him.

PW4 Peter Nambale the assistant chief received information of the incident. He went to check and met accused on the way taking the child to hospital. On inquiring from accused what had happened accused told him that he was disciplining the child because he had picked the avocado.

The accused in his defence denies ever kicking the deceased or even disciplining him on that day. However the evidence of his mother PW2 Grace Nakanjo is clear that when she inquired from the deceased who was crying what had happened the deceased told her it is accused his father who had kicked him on the abdomen. The accused was called to take him to hospital. On the way when asked by PW4 Peter Nambale the assistant chief what had happened accused explained that he was just disciplining the deceased. The evidence of the doctor that the deceased died as a result of blunt injury to the abdomen leading to rupture of the spleen is consistent to the deceased statement that he was hit on the abdomen.

The accused defence that he did not hit the deceased or discipline him on that day cannot be true in view of the evidence of his mother PW2 and the assistant chief PW4 to whom he informed that he had disciplined the deceased. His defence is therefore untrue and is hereby rejected.

After considering all the evidence I am satisfied that accused with aim of causing serious injury kicked the deceased on the abdomen and thereby inflicting injuries from which the deceased died.

I am therefore satisfied that the prosecution has established the offence of murder contrary to section 203 as read with Section 204 of the Penal code and convict him accordingly.

DATED AT BUNGOMA THIS 19TH DAY OF MAY, 2021.

S.N RIECHI

JUDGE