



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CRIMINAL CASE NUMBER 26 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

PATRICK MARANGO WANJALA.....ACCUSED

J U D G M E N T

The Accused **Patrick Marango Wanjala** is charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code.

The particulars of offence are that on the 30th day of August, 2018 at Manani village, Sirende location in Webuye West Sub-county, within Bungoma County murdered **Fred Wanyonyi Wesonga**.

The case for the prosecution is that on 30.8.2018 **PW1 Josphat Mukite Simiyu** who is a teacher at Mahonge Primary school was going to school when he passed near the kiosk of the accused. He saw Fred Wesonga the deceased holding a panga quarrelling with accused. He passed them and called the assistant chief and informed him. At 11 a.m. he received information that one of the people he had seen quarrelling had died. He went to the scene and confirmed it was the deceased.

PW2 Noah Wanjala Mwangala the assistant chief of Muha sub-location testified that on the material day at 7.a. he received a telephone call from the accused who informed him that he had been invaded at his place of work by the deceased. He advised accused not to have a confrontation with deceased. He again received a telephone call from PW1 about the seeing the two quarrelling. He directed the village elder to go to the scene. After 15 minutes accused went to assistant chief home but did not find him. Accused then called the assistant chief and informed him that deceased had cut him with a panga and accused had also cut deceased. The assistant chief went to the scene and found deceased lying down with an injury on the neck. The deceased was dead and lying about 10 meters from the kiosk. The accused came later with the chief to the scene.

PW6 John Moses Sitati the village elder testified that on 29.8.2018 at 10 p.m. the accused went to his home and reported that one William Juma Marango the step father of deceased had gone to his home and attacked him. The next day on 30.8.2018 he went to home of deceased. He found many people present and deceased lying down with injury on the chest. Later accused came with the chief to the scene. Accused told him that they had quarreled with deceased and he stabbed him on the chest.

PW8 Chief Inspector John Nyangaresi recorded a statement under inquiry from the accused. He informed him of his rights and accused elected to make a statement which he produced as Exhibit 4. In the statement accused said that the deceased was armed with a panga and they struggled during which time the panga cut the deceased on the chest.

PW7 PC Edwin Onyango visited the scene with OCS where they found accused with the assistant chief who handed over the accused to him together with a panga and sword. They found the body of the deceased at the scene. He observed that deceased had injuries on the chest and head. They removed the body to the mortuary. He also observed the accused had injuries on the right thump. The accused on interrogation led them to the area behind his kiosk where they recovered the sword in presence of chief, assistant chief and OCS.

The accused gave sworn evidence in his defence. He testified that on 30.8.2018 he woke up at 6.am and went to his bodaboda business. He met the assistant chief Noah Mwangala who asked him to take him to a place he was to pay shs 200. On arrival he paid only shs 100. He asked him for the balance and then saw police officers who handcuffed him. He was taken to Webuye police station where he learnt of this offence of murder. He testified that he knew the deceased as his neighbor whose house is about 800 meters away and had no grudge with him and neither quarreled nor killed him.

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

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

For the prosecution to succeed in proving the offence of murder against an accused person it must prove:

- (i) The fact of death and cause of death.
- (ii) The unlawful act or omission that caused the death.
- (iii) The existence of malice aforethought.
- (iv) That it is the accused who caused the unlawful act or omission that caused the death of the deceased.

In this case, **PW4 Dr. Edward Bilembwa** produced a post-mortem form filled by **Dr. Alex Munyendo** who performed the post mortem on the body of the deceased Fred Wanyonyi Wesonga. Upon examination he found the deceased had bruises on left side of head and back of head, stab wound on left chest which injured the left side of heart and lung. There was internal bleeding into the lungs. He formed opinion that cause of death was due to cardio-pulmonary arrest secondary to penetrating stab wound. This witness therefore established that the deceased died and the cause of death to be due to a penetrating stab wound. The unlawful act was therefore the stabbing which caused injury to the heart and lungs.

Did the accused inflict the injuries that led to the death of the deceased?

PW1 Josphat Mukite Simiyu testified that on 30.8.2018 he was passing on the road next to the kiosk of the accused when he saw deceased armed with a panga at the kiosk. He heard the deceased and accused quarreling with deceased telling accused that they don't want to see accused's wife at their home. He informed the assistant chief of the quarrel he had witnessed and urged him to intervene. **PW2 Noah Wanjala** the assistant chief received a telephone call from accused that the deceased had gone to his kiosk armed with a panga. After 15 minutes accused called assistant chief from assistant chief's home indicating accused wanted to see the assistant chief. The Assistant chief advised him to get in touch with clan elder. The assistant chief called accused and accused informed him he had cut the deceased. The assistant chief went to the scene and found deceased dead.

PW6 John Moses Sitati the village elder visited the scene and found deceased lying down. He informed assistant chief who called police. **PW7 PC Edwin Onyango** visited the scene in company of OCS and found deceased lying down. He was informed that accused was the suspect. The accused led them to the back of the kiosk where they recovered a sword. Accused was then arrested and taken to the police station. **PW8 C.I Nyangaresi** took a statement under inquiry from the accused which was produced s Exhibit Exhibit 4. In the statement under inquiry the accused in explaining what happened on the material day stated'

"He was armed with a panga and said that I will kill you today because you are related with William Marango, I came outside my kiosk and I told him to go away, he refused, grabbed me with an intention of cutting me with the panga, I pushed him and cut me on the thumb of my left hand. I struggled with him while defending myself and unfortunately the matched which he was also armed with pinched him on the chest, and he fall down. I left him down while requesting me to excuse him for the mistake he has done for me.

After the incident I proceeded to the home of the area chief and informed him that one Fred Wanyinyi Wesonga (deceased) had fought with me, left him lying down. The chief and other members of public accompanied me to the scene of the incident and found he had passed on. The chief informed the police from Webuye who visited the scene and took the body."

I am aware that exhibit 4 is a statement under inquiry and not a confession. However, in the statement made voluntarily to the officer inquiring of the offence, lends credence to the prosecution witness evidence that accused was at his kiosk when deceased went there and started quarreling with him. It shows that the accused's defence that he never owned a kiosk, did not have a quarrel with the deceased, never met him on that day to be false. I therefore find the accused's defence not true and reject it.

Upon considering the evidence, I am satisfied that accused is the person who inflicted the injuries on the deceased on the chest from which the deceased died.

I find that the death occurred when deceased went to the kiosk of accused while armed with a panga and generated a quarrel with the accused. For these reasons I find that the offence by accused was committed under provocation as provided for under Section 207 of the Penal Code.

207. When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation as hereinafter defined, and before there is time for his passion to cool, is guilty of manslaughter only.

I therefore find accused guilty of offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code and convict him accordingly.

Dated, signed and delivered at Bungoma this 27th day July, 2021.

S N RIECHI

JUDGE