



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

CRIMINAL CASE NO. 17 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

SAMWEL LANGAT.....ACCUSED

JUDGMENT

1. Samwel Langat is charged with an offence of murder contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars of the offence are that on the 26<sup>th</sup> day of May, 2017, at Shauri Yako Estate, Homa Bay Sub County of Homa Bay County, murdered Charity Atieno.
3. The prosecution case is that the accused inflicted a fatal injury to the deceased and thereafter went to report to the police that he had been attacked by unknown people.
4. Samwel Langat in his defence contended that he did not know the person he is alleged to have killed.
5. The issues for determination are:
  - a) Whether the deceased was known to the accused;
  - b) Whether the accused was involved in the death of the deceased; and
  - c) Whether the offence of murder was established.
6. Clarice Odhiambo Ochieng (PW3) testified that the accused was her tenant. In the single room he had rented, he was staying with the deceased. On 26<sup>th</sup> May, 2017 she spotted some blood stains at the door which was open. When she looked inside, she saw the body of the deceased. She had seen the deceased the previous day as she aired clothes on a drying line.
7. The mother of the deceased herein is Phoebe Odhiambo Soti (PW1). Her testimony was that the deceased had called her on the 24<sup>th</sup> May, 2017 and reported to her that her boyfriend with whom she was living was constantly beating her and had threatened to kill her.
8. Though the accused denied any knowledge of the deceased herein, there is sufficient evidence to show that they were cohabiting.
9. The accused made a report to the hospital where he sought treatment that he had been attacked by unknown people. In his defence he contended that on 25<sup>th</sup> May, 2017 he was admitted at Homa Bay hospital with malaria. The hospital case summary in respect of the accused show that he sought treatment on claims of having been assaulted.
10. I therefore find that the defence of the accused is displaced by the overwhelming evidence against him. He is the one who inflicted the fatal injuries to the deceased herein.
11. In order to found conviction on the evidence on record, the prosecution must prove the existence of malice aforethought. In **Black's Law dictionary, 10<sup>th</sup> Edition** malice aforethought is defined as:

**The requisite mental state for common-law murder, encompassing any one of the following (1) the intent to kill (2) the intent to inflict grievousbodily harm (3) extremely reckless difference to the value of human life (the so-called "abandoned and malignant heart"), or (4) the intent to commit a dangerous felony (which leads to culpability under the felony-murder rule).**

Section 206 of the Penal Code gives instances when malice aforethought may be proved. It provides:

**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;**

**(c) an intent to commit a felony;**

**(d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.**

12. In the circumstances of this case, there is evidence to show that the accused and the deceased attacked one another with knives. Knives were recovered from his house where the body of the deceased was found. The analysis on the two knives revealed as much. They had the blood of both the accused and the deceased. When the accused sought treatment, he was found with a deep cut wound. We may not know who of the two the aggressor was.

13. From the foregoing, find that the prosecution has not proved the offence of murder against the accused. However, the prosecution has proved beyond any reasonable doubt the lesser offence of manslaughter. I accordingly reduce the charge of murder to that of manslaughter. I acquit him of the charge of murder. I find him guilty and convict him for the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.

**DELIVERED and SIGNED at HOMA BAY this 27<sup>th</sup> day of July, 2021**

**KIARIE WAWERU KIARIE**

**JUDGE**