



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT GARISSA**  
**CRIMINAL CASE NO. 10 OF 2018**  
**REPUBLIC.....PROSECUTION**  
**VERSUS**  
**LMS.....ACCUSED**

**JUDGEMENT**

1. The accused **LMS** is face 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 on the 2<sup>nd</sup> of September 2018 at Lafelay Location, Tarbaj Sub-County within Wajir County the said **LMS** murdered **MHG** a child aged 8 years.

The accused pleaded not guilty and the matter proceeded to full trial.

2. The prosecution case is that the deceased was together with two other children. PW1 and PW5 were accosted by the accused while herding goats. Two of the children escaped when the accused then attacked the deceased. The accused was arrested shortly thereafter by members of the public and found in possession of a blood-stained knife. He was arrested shortly thereafter by members of the public and found in possession of a blood-stained knife and handed over to the police. He attempted to escape but was apprehended by those who arrested him. He was then handed over to the police.

3. **PW1 HHG** aged 9 years gave an unsworn statement stating that she is a sister to the deceased. She recalled that the accused accosted three of them while armed with a dagger. The witness and the other girl managed to escape. The deceased tried running away but was restrained by the accused. She knew the accused who used to go to their house before. On escaping they went home and informed their mother **K PW4**.

4. **PW2 GIS** is a grandfather to the deceased. He did not witness the incident. He arrived at the scene much later and saw the dead body. He is known to the accused and saw the accused who had blood stains on his clothes.

5. **PW3 SMD** is a neighbour to the deceased. They grew up together in the same locality. He arrived at the scene of crime after the incident. He followed the footsteps from the scene and the same led him to a person preparing tobacco. The said person was the accused. He saw him with a knife that was blood stained. He stayed there with him until other people arrived and the accused was arrested.

6. **PW4 KM** is the mother to the deceased. She was not known to the accused before. She learnt that her son was killed from PW1 at about 11a.m. She went to the scene crime and saw the deceased.

7. **PW5 MA** informed the court that she was with the deceased and PW1 grazing goats when the accused killed the deceased. She said that she saw the accused kill the deceased with a knife and ran away. She did not know the accused before. They then informed PW4 whom they went to the scene with but did not find the accused. They found the body of deceased lying down.

8. **PW6 Mohamed Antur Hassan** a watchman learnt of the deceased death at about 11 a.m. on the 2<sup>nd</sup> of September 2018 from a neighbour. He went to the scene of crime, saw the deceased body which had stab wounds lying under a tree where there was pool of blood. Together with PW2 they followed footsteps and about 100mts away they found the accused who lives in the same locality. They arrested him and took the knife he had. He tried to escape. They were about 4 people and chased and arrested him. He told them he had killed the child.

9. **PW7 Robert Otieno Ogolla** is a clinical officer working at Wajir Referral Hospital. He conducted the postmortem on the body of Mohamed Hirab Gafey (deceased) at the Wajir Referral Hospital on 2<sup>nd</sup> September, 2018 at 4 p.m. He made the following observations;

- Penetrating wounds 131 cm.
- Blood was dry.
- He had a cut on the neck around the muscles 13 cm deep.
- The cervical bone was dislocated at 6<sup>th</sup> and 7<sup>th</sup> ribs with stab wounds 3 cm deep.
- Left temporal area was cut up to the left ear.
- Had scratches on the front chest.
- There was total discontinuation of the spinal cord from the level of C6 – C7 and absolute cut of the vertebral column and spinal cord around C6 – C7.

He was of the opinion that the cause of death was massive hemorrhage and neurological damage related to the deep sharp cut of the posterior neck using a sharp object.

**10. PW8 I.P Muse Yusuf** an A.P Officer informed the court that on 2<sup>nd</sup> September 2018 while on duty, at about 1 p.m. he received news that there was a body in the forest. Four officers proceeded to the scene and found that members of the public had arrested the accused who wore a white T-shirt and blue jeans. Both had blood stains. The deceased was lying with his neck cut in the bush. He reached out to the O.C.S Wajir who arrived and took the body of the deceased to Wajir Hospital Mortuary and re-arrested the accused.

**11. PW9 Lucy Wamukera Wachira** is an analyst from the government chemist. She produced a report of analysis conducted at the government chemist following a request from DCI Wajir East.

She informed that they received;

- **A1** – A knife in a khaki envelop.
- **A2** – Blue jeans.
- **A3** – A floral brown.
- **A4** – White shirt/red striped shirt.
- **B1** – Blood sample in a container from **LS**.
- **B3** – Blood sample in a container for **KMG**.
- **B2** – (not received).

She further informed the court that their findings were as follows;-

- **A1** – knife was lightly stained with human blood.
- **A2** – pair of jeans moderately stained with human blood.
- **A3 & A4** – heavily stained with human blood.

They generated D.N.A of the blood samples.

They formed the opinion that the DNA profile generated from trouser A2 and from blood sample B1 was blood of same person – of L.

Further there are 99.9+% chances that donor of blood on the knife, shirt marked A3 & A4 is the biological son of donor of blood sample B3.

12. At the close of the prosecution case the accused was found to have a case to answer and was placed on his defence.

13. The accused gave a sworn statement where he denied the charges levelled against him. He was not cross examined.

14. For the offence of murder three ingredients have to be proved. Firstly, death has to be established, secondly it must be proved that action or omission of the accused caused the death of deceased, thirdly that the action or commission was actuated with malice aforethought.

15. The evidence before court by all prosecution witnesses supported by the postmortem report indicated that Mohamed Hirab Gafe died as a result of stab wounds. The postmortem report gives a graphic detail of the cause of death.

**16. PW1 and PW5** were in the company of the deceased when the three were accosted by one carrying a knife. PW1 says she knew the accused and points a finger at him. PW5 did not know him before but points at him as the killer. The incident was in the morning and the visibility clear. PW1 and PW5 were children aged 9 and 10 respectively and one may hesitate to accept their confidence on the identification of the aggressor. However PW2 and PW3 both testified that they followed footsteps that led to where the accused was and they found him with a knife and in blood stained clothes. Their evidence has minor discrepancies, did they follow the footsteps together? Did they both arrest the accused? Their evidence in this regard is somehow not tallying.

17. Having made the above observations that placed the accused at the scene of crime but with some inconsistencies. The evidence of PW8 closes any gaps that there may have been in the prosecution case as the analysis of the government chemist is that the knife found with the accused, his T-shirt and trousers all had blood stains of a person whose DNA is linked to Khadija and there are 99.9+% chances that the said person is her son (the deceased).

18. In his defence the accused simply denied committing the alleged crime thus failing to dislodge the prosecution evidence against him.

19. Evidence before court therefore squarely places the accused at the scene of crime. Secondly, he was found with a bloodstained knife that was used in cutting the deceased. Both the eye witnesses and circumstantial evidence point to the accused.

20. Base on the above, the court finds that the accused is the person who accosted the three children as they were herding goats, got hold of one of them, the boy aged 7 and butchered him mercilessly to death. The accused is therefore found guilty of the offence of murder and convicted accordingly.

**DATED, DELIVERED AND SIGNED AT GARISSA THIS 21<sup>ST</sup> DAY OF OCTOBER, 2021**

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**ALI-ARONI**

**JUDGE**