



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 91 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

MARTIN MWITI KIRIMI.....ACCUSED

JUDGMENT

1. The accused Martin Mwiti Kirimi was charged with the offence of murder contrary to section 203 as read with section 204 of the penal code cap 63 Laws of Kenya.
2. Particulars were that Martin Mwiti Kirimi on the 28th day of September 2016 at Kithirune Location, In Imenti Central District within Meru County, Murdered Nicholas Mutuma.
3. The prosecution had a total of 8 witnesses to support its case that the deceased was murdered by the accused person herein. Out of 8 witnesses it is PW7 Muriuki Kiarie who claimed that on 23.9.2016 at 10.00 pm he was coming from a funeral in Kariene. When he met Mwiti, the accused herein who told him to go and check on the deceased who had been cut.
4. He said he went and found Kamotho, the deceased along the fence to Kithurine forest lying facing the ground and he was bleeding from the head. That he called PW1 who in turn called PW6 to inform the deceased father.
5. That it is PW3 Mwangera who advised they called the deceased persons father first before they could take the deceased to hospital at Githongo but they were referred to Meru General Hospital. PW7 said the accused told him they had clashed and he cut the deceased.
6. PW6 Kellen Gatwiri testified that on 23.9.2016 Kiambi called her at 10.00 pm and instructed her to tell her father in law to go to Nyayo Tea Zone as Kimotho had been cut. That she passed the information and after the father in law left the next day, she learnt it was Mwiti who had cut Mutuma. She said Mwiti was a neighbour at her parents home. She said the deceased was her brother-in-law. She said that she was with the accused person at a funeral at 5.00 pm near Kariene and she was not aware of any problem between him and the deceased.
7. PW5 Jackson Mwangera said he was woken up by a young man who told him there was someone who had been cut and was lying in the middle of the road. He rushed to the scene and found the person was bleeding. That he got a cloth to tie the cut to stop bleeding. That he then called Chief Mutuma and he reported the Chief advised that they take the victim to hospital. He went to get his car and on return found the parents of the deceased at the scene and they helped put the victim in the car and they proceeded to Githongo Police Station where assault was booked and they proceeded to hospital. At Githongo hospital they were referred to Meru district hospital. PW5 said accused and deceased were his neighbours and he didn't know if there was a problem between them.
8. PW4 Dr. Benard Midia pathologist from Kenyatta national Hospital conducted Post mortem on the body of the deceased on 5.10.2016 and established cause of death as raised intracranial pressure due to subdural and subarachnoid haemorrhage due to injury to the head. He produced PM Report –Exp2.
9. PW2 testified that on 23.9.2016 the deceased who was his son left the house after taking tea and at 11.00 pm his daughter in law Gatwiri called and informed him Mutuma had been cut near the home of M'Mburugu. He said he learnt it was Kiambi who called Gatwiri. That he proceeded to the scene and found Mwangera – PW3- and Muriuki PW7 had brought a car. He said the deceased had a cut on the right side of the head and the cap he was wearing had fallen. He said he handed over the cap to police. PW2 said that it is Muriuki PW7 who told him it was Mwiti who cut his son.
10. After calling Chief Mutuma to report they proceeded to Githongo Police station and to Githongo Hospital. At Githongo hospital the deceased was bleeding profusely and he was taken in an ambulance to Meru General Hospital where he was admitted. That on the 3rd day he was referred to Kenyatta National Hospital where he died on 28.9.2016.

11. PW2 said the accused persons grandfathers home is not far from his home and that they had not differed. He said the accused was friendly to them. He said from scene of murder to PW7's home is very close. He said PW7 and accused came from same family. He said he never saw the accused with the deceased. He said when the deceased died the accused escaped. PW1 was in Timau when he received phone call that the deceased had been cut. That he made phone call to Gatwiri his brothers wife and instructed her to look for Kimotho's father and tell him he had been cut. PW1 said the accused was his sisters son where as the deceased was his brother/cousin. He said he didn't know of any difference between the accused and the deceased PW1 didn't give the name of the person who called him.
12. PW3 also didn't give the name of the youngman who woke him up. PW7 didn't say whose funeral he was coming from at 10.00 pm. PW1 said that PW7 brought trouble when his father wanted to give the accused land as the accused persons father didn't take care of him. He said PW7 and accused were not in good terms and PW7 could have fabricated the accused because of land dispute. He said it is possible someone else killed the deceased and not accused. He said the families of the deceased and the accused lived cordially. He said there was no reason why accused could have killed the deceased.
13. PW8 P. C. Joshua Sila investigated the murder and preferred charge against accused.
14. Accused was placed on defence and he gave sworn statement and said on 23.9.2016 he was at his grandfather's place in Timau where he went to help him plough land in preparation for planting.
15. He said that Kiarie PW7 fabricated him so he could be jailed so that they grab the land given to him by his grandfather accused said that the accused was a friend to him and could not have killed.
16. DW2 the accused persons brother testified that on 23.9.2016 accused was at their grandfathers place in Timau. That on 24.9.2016 he learnt Mutuma had been killed and his mother told him it was alleged that it was accused who had killed Mutuma. He said that his grandfathers brother – PW7 had a land dispute with the accused as he didn't want the grandfather to give him land. He said that accused arrived home on 24.9.2016 at 5.00 pm and later disappeared at 7.00 pm. He said at 9.00 pm he was woken up by a group of people who wanted to the accused including the chief.
17. DW3 Stephen Mungatia grandfather to the accused testified and said he has homes in Timau where he bought land and in Kithurune. He said the accused persons father who stays in Kionyoo denounced the accused. He said that he was the one who called the accused on 20.9.2016 to go and help him plough and that accused went to Timau on 21.9.2016 and that he returned on 24.9.2016 when his mother called.
18. He said his step brother Muriuki – PW7 had a dispute with him over land which he gave to Mwiti. He said he had severally sat down with Muriuki and elders over Mwiti's land but he repeatedly wronged Mwiti. He said Muriuki fabricated Mwiti.
19. DW4 accused persons mother also testified and said that on 24.9.2016 he received a phone call claiming accused had killed Nicholas. She said a crowd of people went to her home to look for accused but didn't find him. She said PW7 and accused had land dispute. She said accused was at his grandfathers home on 23.9.2016 and didn't kill the deceased.
20. From the evidence of the prosecution witnesses and from the accused persons defence and his witnesses evidence the issue in dispute is whether the prosecution has proved beyond all reasonable doubt that the accused killed the deceased. That the deceased died and the cause of his death as established by the pathologist PW4 in Exhibit P2 is not in dispute.
21. It is also not in dispute that whoever killed the deceased was actuated with malice aforethought because the injuries inflicted were so grave that the deceased had to be referred from Githongo Subcounty hospital to Meru County Hospital and to Kenyatta National Hospital but he finally succumbed to those injuries.
22. PW1 said he didn't remember who called him to say that Kimotho – the deceased had been cut. PW1 said PW7 had brought trouble when PW1's father wanted to give the accused land and that PW7 and accused were not in good terms.
23. PW1 didn't believe accused killed the deceased as accused persons family and the deceased family lived cordially. PW1 said accused and the deceased were very good friends. He confirmed accused persons evidence that deceased was accused persons good friend and accused had no reason to kill him.
24. PW5 also claimed that a youngman whose name he could not remember woke him up and told him there was someone who had been cut and was lying in the middle of the road. He didn't also say whether PW7 was at scene, but PW7 claimed he is the one who called PW5 who advised that parents of the deceased be called.
25. PW7 said he was from a funeral at 10.00 pm when he met the accused who told him to go and check on the deceased who had been cut and was lying on the road. PW7 said he is the one who called PW5 Mwongera to scene. PW7 didn't see the accused cut the deceased and there is no either evidence pointing to accused person having committed the offence to corroborate PW7's allegations.
26. PW7 didn't say from whose funeral he was coming at 10.00 pm coupled with the evidence of the accused together with DW2. DW3 and DW4 that he was in Timau on the material day the deceased was cut, this court finds that the standard of beyond reasonable doubt has not been established. There is a possibility PW7 committed the offence and as alluded to by PW1 and accused and his evidence may have fabricated the accused.
27. There is a possibility the young man who woke up PW5 and whose name PW5 didn't give killed the deceased. There is also a possibility the accused cut the deceased because PW6 said she saw him at a funeral on 23.9.2016 at 5.00 pm. As a result the doubt raised is

resolved in favour of the accused and he is acquitted under S. 322 CPC.

HON A.ONG'INJO

JUDGE

JUDGMENT DELIVERED, DATED AND SIGNED IN COURT ON 30th JANUARY 2020.

In the presence of:

CA:- Mwenda

State:- Mr Namiti for state.

Accused :- Present in person

Mr Munene Advocate for Accused:-

HON A.ONG'INJO

JUDGE