



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**CRIMINAL CASE NO. 44 OF 2015**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JOHN NKOROI RUBER.....ACCUSED**

**JUDGEMENT**

1. **JOHN NKOROI RUBERI**("the Accused") has been charged with the offence of murder contrary to Section 203 as read with section 204 of the Penal Code Cap 63 of the Laws of Kenya. The Particulars of the offence being that on 1<sup>st</sup> June 2015 at Murinene village, Katheri Central Location, Abothuguchi West Division in Imenti Central District within Meru County, the accused Murdered **MARTIN MURIITHI**. He pleaded not guilty and the prosecution called six witnesses to establish its case.

2. **PW1 MOSES MBAYA** testified and told the court that on 1<sup>st</sup> June 2015 at 8:00pm Mutuma came and told him that the deceased was being killed at the accused persons place. He left in the company of his wife Gladys, Mutuma who is the deceased son and his wife Kagendo. When they got to the accused persons home he saw the accused beat the deceased. When the accused saw them he entered his house and locked himself in. PW1 then instructed Kagendo and the deceased son to leave and call Kathurema and John Mutwiri to come with a car. He dragged the deceased from where he was to the road so he would get a car to take him to hospital. The deceased had a cut at the back of his right leg, he had been beaten until he could not walk. The deceased hands were tied on the back using a vest and had been made to kneel. The accused persons house had blood stains on the wall which he was able to see because he had a torch. The Jembe handle which was used to beat the accused had a nail. There was also a panga and a knife. Kathurema came with a car in the company of Richard which they used to take the deceased to Githongo hospital. He was stitched and discharged. The following day they took him to Meru General Hospital but before he was treated he died.

3. **PW2 JACOB KIRIMI** told the court that on 5<sup>th</sup> June 2015 he recalls he was called by his brother and informed him that his son had died. They went to identify the body of the deceased at Meru General Hospital and a Post mortem was conducted.

4. **PW3 MOSES KATHURIMA** a teacher told the court that on 1<sup>st</sup> June 2015 at around 8:00 pm he heard Gladys shouting his name. She asked him to take her son to hospital as he had been stabbed. She was in the company of Mutuma. Together they went to the scene of the crime where they found PW1 dragging the deceased from the accused compound. They assisted in putting the deceased in the vehicle and they rushed him to hospital. They passed by police station to get a P3 form before they went to the hospital. The deceased was bleeding profusely all over the body. At the hospital the deceased wounds were stitched and when he was discharged he took them home.

During cross examination PW3 told the court that he had spoken to the deceased who told him that it was the accused that hit him on the head with a blunt object.

5. **PW4 JOSEPH MUTUMA** told the court that on 1<sup>st</sup> June 2015 he heard commotion at the home of the accused. He heard the accused shout "Call Gladys or Mbaya to help you" He said it three times. He was at his home which neighbors that of the accused. He rushed to PW1's home where he informed him that the accused and the deceased were fighting and that he should go and see. Together with Mbaya and their wives they went to Nkorois where they found the deceased lying on the ground and when the accused saw them he locked himself in his house. The deceased had injuries all over his body. Thereafter they procured a car and managed to take the deceased to Githongo hospital. The next the deceased was again taken to hospital but this time PW4 did not accompany them.

6. **PW5 DR. WINNIE MUTUNGA** a doctor working at Meru Teaching Referral Hospital testified and told the court that the Post Mortem Report was prepared by Dr Kihumba who is well known to her. She confirmed his signature and presented the report. The deceased's right elbow was swollen with extensive lacerations. The left arm had deep lacerations, there were multiple lacerations on the front part of the right leg. There was deep laceration on the left knee. There were multiple cut wounds on the scalp with bloody discharge oozing from the ears. On the internal examination there was extensive subgaleal hematoma with parietal skull fracture on the back side of the head and intracranial hemorrhage. As a result it was established that the cause of death severe head injury due to blunt force trauma.

7. **PW6 P.C JOSHUA SILA** recalled that on 6/6/2015 he was sent by the DCIO Imenti Central to proceed to Githongo Police Post and

collect a suspect of murder. He then escorted the accused to Kariene police station where he was booked. On carrying out investigations PW6 established that on 1/6/2015 the accused was at his residence when he came across the deceased and confronted him. He hit the deceased with a wooden stick which was presented to court and when they went to the accused residence he confirmed that the said stick was used to hit the deceased. As to what happened at the scene he reiterated the testimonies of the witnesses herein. He however added that there was an issue between the deceased and the accused which was never disclosed.

8. At the close of the prosecution case the accused gave his sworn testimony. DW1 testified that on 1/6/2015 he went to kithaku to do some work where he had been called to go plough and when he went back home in the evening he slept. The next day he woke up and went where he had been hired and he returned home at 5.00 pm. He did not see the deceased on that day nor the day before therefore he is not the one who killed the deceased. The accused also denied knowing the deceased. That he left his house a long time ago and he is not familiar with the people in the village and it was in 2013 that he came back and it is his brother who lives on that land.

9. Having considered the evidence on record, the issue for determination is whether the prosecution has beyond reasonable doubt that the accused committed the offence of murder as provided under **Section 203 as read with section 204** of the **Penal Code**.

10. **Section 203 of the penal code** defines that offence as follows:-

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

11. Also in **Republic v Mohammed Dadi Kokane & 7 others [2014] eKLR**, the court held as follows: -

**“This definition gives rise to four (4) crucial ingredients of the offence of murder all four of which the prosecution must prove beyond a reasonable doubt in order to prove the charge. These are:-**

**1. The fact of the death of the deceased.**

**2. The cause of such death.**

**3. Proof that the deceased met his death as a result of an unlawful act or omission on the part of the accused persons, and lastly**

**4. Proof that the said unlawful act or omission was committed with malice aforethought.”**

12. On the fact of death and cause of death PW5 presented the post mortem report that confirmed that the deceased died due to a severe head injury due to blunt force trauma. All the prosecution witnesses and the Appellant confirmed the fact that Martin Murithi died.

13. On the third issue as to whether the death was as a result of an unlawful act or omission and who caused the death of the deceased PW1 testified that PW4 came and informed him that there was commotion at the house of the Appellant. When he proceeded there he found the accused person beating the deceased and once the Appellant was alerted of their presence he locked himself inside of the house. Additionally, PW4 heard the accused person beat the deceased while telling him to call his parents to come and assist him. It is PW4 who rushed to go and inform PW1 that his son was being beaten at the Accused's home and he accompanied PW1 and his wife to the Accused's home and found the accused beating the deceased and he had been injured. PW3 was called to go and take the deceased person to hospital and he went and found Mbaya and Moses dragging the deceased from the Appellants compound and he assisted them to put him into the vehicle and he rushed him to hospital. PW4 testified that the deceased was bleeding profusely and he was muddy because it was raining. PW3 confirmed that he knew the owner of the home from where they had picked the deceased and it belonged to Johana Nkoroi the Accused person herein. He also said that the deceased told him that it was Accused who hit him on the head with a blunt object. In **Philip Nzaka Watu vs Republic [2016] eKLR**, the Court stated the following on admission and reliance on a dying declaration:

**“Under section 33(a) of the Evidence Act, a dying declaration is admissible in evidence as an exception to the rule against admissibility of hearsay evidence. Under that provision, statements of admissible facts, oral or written, made by a person who is dead are admissible where the cause of his death is in question and those statements were made by him as to the cause of his death, or as to any of the circumstances of the transaction leading to his death. Such statements are admissible whether the person who made them was or was not expecting death when he made the statements. .... While it is not the rule of law that a dying declaration must be corroborated to found a conviction, nevertheless, the trial court must proceed with caution and (sic) to get the necessary assurance that a conviction founded on a death declaration is indeed safe.”**

14. In consideration of the evidence of PW1, PW3 and PW4 coupled with the fact that the deceased told the 3 witnesses that the accused beat him I do find that the prosecution has proved beyond reasonable doubt that the death of the deceased was as a result of unlawful act committed by the accused.

15. On the fourth ingredient the witnesses indicated that the deceased had been tied with a vest while the accused was beating him. The deceased was found with multiple wounds and lacerations all over the body a fact that was confirmed by the postmortem report. The accused person must have known that inflicting the said injuries on the deceased would cause grievous harm or even lead to death. In **Daniel Muthee v R. CA No. 218 of 2005 (UR)**, while considering what constitutes malice aforethought, the Court of Appeal observed as follows:

**“When the appellant set upon the deceased and cut her with a panga several times and then proceeded to cut the young Allan in a similar manner, he must have known that the act of cutting the deceased persons on the head with a sharp**

**instrument would cause death or grievous harm to the victims. We are therefore satisfied that malice aforethought was established in terms of Section 206 (b) of the Penal Code”.**

16. It can therefore be concluded that the accused person was actuated with malice when he inflicted fatal injuries on the deceased.

17. The accused person in his defence claimed that on 1<sup>st</sup> June 2015, he went to work in Kithaku and when he returned in the evening he slept and the following day he again went back to work and returned at 5.00 PM. He said that he did not see the deceased on 1<sup>st</sup> June 2015 and that he did not kill the deceased. The accused said he did not know the deceased and only learnt about him when he was arrested. PW1, PW3 and PW4 however, confirm that he is the one who assaulted the deceased. The deceased was removed from his home with multiple injuries to which he later succumbed. PW4 heard him quarrelling and beating the deceased and PW1 found him beating the deceased. The accused person's defence of alibi is therefore an afterthought and cannot be regarded by this court in consideration of the overwhelming evidence by the prosecution witnesses.

18. In the circumstances, I find that the prosecution has proved beyond reasonable doubt that the accused is guilty of the offence of murder of **ROMANO NGACHIA** and consequently he is convicted under section 322 of the CPC.

**HON A. ONG'INJO**

**JUDGE**

**RULING DELIVERED, DATED AND SIGNED IN COURT ON 23<sup>RD</sup> DAY OF JANUARY 2020.**

**In the presence of :**

C/A: Kinoti

Accused: Present in person

State : Ms Mbithe for state

Mr Wamache Advocate for accused

**HON A. ONG'INJO**

**JUDGE**

**Ms Mbithe for state**

I don't have accused persons records. I require time to find out. We can have mention date.

**Order:** M 26.2.2020 for records, mitigation and Victim Impact Statement. Accused remanded in custody.

**HON A. ONG'INJO**

**JUDGE**