



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

CRIMINAL CASE NO. 1 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

SIMON MBIRIRI WANJIKU alias WAHIU.....ACCUSED

RULING

1. Simon Mbiriri Wanjiku *alias* Wahiu has been arraigned on the information of murder contrary to section 203 as read with section 204 of the penal code. Particulars are that on the 1st day of December, 2018 at Oloosurutia village, Kiserian Location in Kajiado North Sub County within Kajiado County, he murdered Joseph Ndegwa Karanu.

2. The accused denied the information and in attempt to establish its case against the accused, the prosecution has called 8 witnesses.

3. PW1, Maximiller Mamey Olumba, a tenant at the accused's premises as was the deceased told the court that on 1st December, 2018 at around 7 am, she was preparing to go to church when she heard a commotion. She heard the accused saying remove your things and leave. She later heard a person saying "he has killed him." She rushed to where the commotion was and saw the accused's brother. She had him saying "let them kill one another." She moved closer and saw both the accused and deceased bleeding. The deceased had a knife and was holding the accused. She asked the deceased not to stab the accused but he told her that the accused had killed him. The deceased unbuttoned his shirt to show her an injury he had. The deceased's intestines were protruding. She asked the deceased to come to her. The deceased moved towards her and handed over the knife to her. The deceased asked for drinking water but they did not give him.

4. A vehicle came and they rushed the deceased to Matasia Nursing Home for treatment. At the hospital, the medical attendants were unable to attend to the deceased due to the extent of the injuries. They referred the deceased to Kenyatta National Hospital (KNH).

5. The witness told the court that they called for assistance from the police who came and rushed the deceased to KNH. She Later recorded her statement with the police and learnt that the deceased had passed on. She identified the knife that was used in court. In cross-examination, the witness told the court that she heard the commotion within the accused's compound.

6. PW2, Esther Mbaire Gathenya, testified that she knew both the accused and the deceased who lived in the same compound where she was also a tenant. She told the court that on 1st December, 2018, she was sleeping when she heard a commotion. The accused and the deceased had a confrontation. She heard the deceased tell the accused you know you have killed me. She went outside the house and saw the deceased holding a knife. The deceased stabbed the accused on the shoulder. She went back to her house to see her children who were crying. She told the court that she saw the PW1 ask the deceased for the knife.

7. PW3, Edwin Ndungu Karanu a brother to the deceased, told the court that on 1st December, 2018 he received a call informing him that his brother had been injured and that he was at Matasia Nursing Home. He rushed to the facility but was informed that his brother had been referred to KNH. He went to KNH and was told that the deceased had been rushed to theatre. He waited until 8.30 pm when the deceased was taken to ICU. He was later informed that the deceased wanted to talk to him. He was taken to the ward and the deceased informed him that the accused had stabbed him. The deceased later passed on. On 6th December, 2018 he witnessed the postmortem after he identified the body for that purpose.

8. PW 4 – Dr. Midia, a pathologist based at KNH, testified that on 6th December, 2018, he conducted an autopsy on the deceased's body after it was identified to him by PW 3 and her sister. The body was of an African male of good nutritional status and well preserved through refrigerator. The body has signs of medical interventions through surgical scar operation on the middle abdomen. The body was pale, a sign that the deceased had lost a lot of blood.

9. Internal examination revealed that the right lung had collapsed. There was blood within the lung space showing internal bleeding. Further examination revealed a stab wound on the lower part of the chest. The trajectory of the stab wound was through the left lobe of the liver which was repaired and there was blood about 200 ml. The lower part of the intestines had also been repaired. The stab wound went through

the colon and there were repairs in that part. The rest of the examination was normal.

10. He concluded that the deceased died due to excessive loss of blood due to penetrative stab wound which went through the chest to the abdomen.

11. PW 5, Fredrick Mariara, a clinical officer attached to Matasia Nursing Home, testified that on 1st December, 2018 he was at work when a patient was brought to the hospital with injuries in the abdomen. He had injuries in the upper abdomen and the intestines were out. They administered first aid, cleaned the wound and bandaged it. They notified the police and a police vehicle from Kiserian police station came and transferred the patient to KNH since their facility could not handle the situation.

12. PW 6 CI Peter Omaro Sigara formerly the DCI Kiserian police station testified that on 1st December, 2018 he received a call from a lady that there were two people at Oloosurutia and one of them had been stabbed and rushed to Matasia Nursing Home. The other person was lying in the house. He recorded the report in the OB and proceeded to the scene in the company of CPL. Salat, the duty officer on that day. At the scene they found the accused lying in his mother's house. They were assisted by members of the public to put him in the vehicle. He had stab wounds on the back and shoulder. They took him to hospital through Matasia Nursing Home where he found the deceased at the casualty. He also had a stab wound in the stomach which had been bandaged. They were advised to take the patient to KNH given the seriousness of the injury. They placed the deceased in the vehicle, recovered a knife at the Nursing Home and proceeded to KNH.

13. On 2nd December, 2018 he received a call that the person had passed on. The accused was then considered a suspect and placed in custody. He was discharged three days later. He recorded statements from some witnesses. He identified the knife MFI 1.

14. PW7 – PC Wesley Komen testified that on 17th December, 2018 he proceeded to KHN to relieve a colleague. At Hospital, he was informed that the suspect (accused) had been discharged. He made escorted the suspect to Kiserian Police station, where he was instructed to transfer the suspect to Ngong police station which he did and booked him for murder.

15. PW8 – PC Dickson Misati testified that on 6th December, 2018, he was assigned by PW6 to continue with investigations of the case. He visited the scene on 7th December, 2018 and recorded statements from some witnesses. On 13th December, 2018, he sought more time from the court at Ngong to hold the suspect for more investigations and later charged the accused with the offence once he concluded investigations. He produced the murder weapon as an exhibit.

16. At the conclusion of the prosecution's case, both counsel for the defence and prosecution opted not to submit and left I to the court to make a ruling on a case to answer.

17. I have considered the evidence lead by the prosecution, the accused and the deceased were together on the 1st December, 2018. They were seen by PW1 and PW2 with a knife. Both sustained injuries and the deceased died of the injuries. The evidence led by the prosecution not only places the accused at the scene, but is also clear that he was the last person seen with the deceased when they were engaged in a confrontation.

18. From the evidence, the deceased died of injuries he sustained on 1st December 2018. The accused and the deceased were together and the accused may know what happened if not how the deceased sustained the injuries.

19. For that reason, I am satisfied that the prosecution has established a prima facie case against the accused to require him to be placed on his defence which I proceed to do.

Dated, signed and delivered at Kajjado this 27th day of April, 2020.

E.C. MWITA

JUDGE