



**REPUBLIC OF KENYA**

**IN THE HIGH COURT KENYA**

**AT MERU**

**CRIMINAL CASE NO.86 OF 2017**

**REPUBLIC.....PROSECUTION**

**VERSUS**

**DORIS NKATHA.....ACCUSED**

**JUDGEMENT**

1. Doris Nkatha is 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. The particulars are that Doris Nkatha on the 2<sup>nd</sup> day of October 2017 at Malaene Village Ndoledi Location in Igembe North Sub County within Meru County, jointly with another not before court murdered Ratanya Gitonga, alias Kauni.

3. The prosecution availed 4 witnesses to support its case against the accused person, PW1 testified that the accused who is her neighbour went to her home at 8.00 a.m while she had blood stains on her head and clothes and informed PW1 that she had cut Kauni 3 times and she didn't know if he would survive. In cross-examination PW1 said she didn't go to the scene of the assault and she did not know where the scene was. She said she saw Kauni 1 day before she died.

4. PW2 testified that on 2<sup>nd</sup> of October 2017 at 6.00 a.m, the accused passed by her home and inquired from her children where she was and when she got out of the house the accused person asked for water to drink and she gave her the water. That she told PW2 that Kauni the deceased had cut Mwenda and she was going to find out if Mwenda had fallen on the road. She said that Doris had blood stains on her head and on her t-shirt. PW2 said Mwenda was the accused person's husband and that the accused had informed her that Kauni had beaten Mwenda at night. She also said that since 2017 she has not been seeing Mwenda in the village. He said she did not visit the scene of the offence and she suspected that the blood stains on the accused persons head and t-shirt came from her husband who she claims had been cut by Kauni.

5. PW3, PC Francis Okonji testified on behalf of Sergeant Peris Ngima the initial Investigating Officer who had received a report of assault from Francis Muthee. The report was that the son in law of the reportee on Mwenda had assaulted the deceased herein cutting him severally and seriously injuring him. That later members of the public reported that someone had been killed within Malaene Village and the body was in a house in the village, the scene was visited by Corporal Kimutai and PC Mugendi who returned to the station escorting the accused person herein who had been arrested by villagers on the ground that he and her husband were responsible for the murder of Kauni, the body of the deceased was taken to Nyambene Sub-County Hospital for post mortem. PW 3 said that the scene of the offence was premises leased to Doris and Mwenda for brewing of Changaa.

6. After post mortem had been conducted by Dr. Kariuki as per the report produced by PW4 Dr Sammy Githu Wachira, the accused person was charged and arraigned in court. From the doctor's report the deceased body had multiple cuts on the back. There were deep cuts into the chest cavity a cut to the right hand extending to the bone, two cuts on the left wrist extending to the bone, 4 cuts on the left side of the face above the ear and across the ear, another long cut below the ear and another at the level of the jaw. On the respiratory system there was blood on the chest cavity with fractured ribs on the back on the left side. On the head there was fractured skull, multiple fractures on the temporal and frontal bones. On the nervous system there was subdural haemotoma on the left side. The opinion of Dr. Kariuki was that the cause of death was cardio-pulmonary arrest due to head and chest injuries with a sharp object with multiple cuts. The Doctor was of the view that the wounds at the back of the deceased were a sign that the deceased could have been running away.

7. The accused was placed on her defence. The accused person in her defence gave sworn statement and said that on the night of 1<sup>st</sup> and 2<sup>nd</sup> of October 2017, Mwenda woke her up to show her how she had been cut. That they asked him to go to hospital or the police station but he refused. Mwenda did not say where he had come from or who had cut him. The accused said that Mwenda woke her up between 2.00 a.m and 4.00 a.m. She said she left Mwenda sitting outside the house and she went back to sleep. She said that Mwenda had a cut on the head and shoulder, she denied that she cut the deceased. She also said that she did not have any blood stains on her clothes. She said she did not know

who killed the deceased. She said that her father Muthee woke up and talked to Mwenda who was drunk. The accused denied having gone to PW1 and PW2's home on the morning of 2<sup>nd</sup> October 2017. The accused said that Susan PW1 had a grudge with her because she said that the accused person's cow had trespassed in to her farm in March 2017. Accused also said that PW 2 had a dispute with her which was resolved with elders in 2015 .

8. Francis Muthee the father of the accused testified that on 1<sup>st</sup> of October at 2.50 p.m he was asleep when a young man known as Mwenda woke him up and said that he had been cut by Kauni. That he told Mwenda to enter the accused's house and sleep so that he could be taken to the hospital the next day.

9. DW2 that Mwenda had a cut on the head on the left side, he said that he did not see Kauni the deceased on the material night, that the following day at 6.00 a.m he found Mwenda had left. He decided to go and find out why Kauni had cut Mwenda but found that Kauni had been cut and he called for a motorbike to take him to hospital but the rider refused to carry the deceased. That he went to report to the police who were at a road block but PC Kimutai referred him to Kiutene police station .DW 2 said that when the police vehicle came to take Kauni to hospital they found that he had died. He said that Mwenda had escaped at night and he learnt that he was in Tanzania and while the deceased body was being taken to hospital he learnt that people were going to burn the accused and he sent a motor bike to rescue her. DW2 said that he was a nyumbakumi and that the deceased was their neighbour. She also said that PW1 and PW2 had differed with the accused and that PW2 accused him of rape and they went to NjuriNcheke and that the OCS Kiutene discovered that the accusations were false. He said that in 2017 he did not differ with PW2 , he also said that when he heard a mob wanted to lynch the accused he sent for a motorbike to bring her to the sub area. He also said that it is meme who had mobilised members of the public to go and lynch those who had killed Kauni.

10. In the accused person's written submissions it was argued that the t-shirt that the accused was alleged to be wearing and which was blood stained was not taken for examination to establish whether the blood came from the accused person's husband or the deceased. It was also submitted that the murder weapon and the t-shirt was not produced in court.

11. From the evidence on record for the prosecution and Defence the issues for determination by this court are whether the ingredients for the offence of murder have been established by the prosecution namely:

**i. The death of the deceased and the cause of death;**

**ii. That the accused caused the unlawful act or omission which caused the death; and**

**iii. That the accused had malice aforethought as defined under section 206 of the Penal Code.**

12. The fact that Ratanya Gitonga alias Kauni died is not in dispute. The prosecution and the defence are in agreement of this. It is also not in dispute that his death was caused by cardio-pulmonary arrest due to severe head and chest injuries with a sharp object with multiple cuts as per the post-mortem report produced by Dr. Sammy Githu. The multiple cuts on the head on the back and upper and lower limbs were intentional and not accidental and were meant to cause grievous harm or death of the victim. The act was therefore unlawful and actuated with malice aforethought as defined under Section 206 of the Penal Code.

13. Whether it is the accused person or her husband/boyfriend who committed the unlawful act that led to the death of the deceased the evidence on record is that of PW1 and PW2 that on the 2<sup>nd</sup> of October the accused person passed by their homes in the morning and informed PW1 that she had cut Kauni and she didn't know whether he would survive but to PW2 whom she went to earlier at 6.00 p.m she said that Kauni had cut Mwenda. In accused person's defence in court she claimed that Mwenda woke her up at night so that she could see how he had been cut and when they told Mwenda to hospital or to the police station he refused and she left him seated outside the house as she went back to sleep. The accused person's father on the other hand, a village elder testified that he was woken up by Mwenda who was making noise who was making noise and said he had been cut by Kauni. He said Mwenda had a cut on the head on the left side and that he told him to enter into the accused person's house and sleep so that he could be taken to hospital the next day. When the accused allegedly went to PW1 and PW2's home on the material morning at different times and they saw she had blood stains on her body she did not tell them that the blood stains on her head and on the t-shirt she was wearing came from the cut inflicted on Mwenda. She didn't also tell PW1 and PW2 that Mwenda had gone to her home and claimed that he had been cut by Kauni. Her evidence and that of her father DW2 is contradicted in that both claim that Mwenda woke them up but the accused said Mwenda did not say who had cut him and yet her father who was in the same compound in a different room claims that Mwenda alleged that it is Kauni who had cut him. PW1 and 2 said that the accused was on her way to her home when she passed by their homes. The accused volunteered the information given to PW1 and PW2 and she cannot be said she was under any form of duress because she had not been arrested.

14. DW2 the village elder went to report that his son in law Mwenda had killed the deceased but when told to record a statement he declined to do so but when he heard that members of the public were going to lynch the people who had killed the deceased he sent a motorcycle to rescue his daughter. His conduct in the view of this court is questionable and not consistent with the conduct of a person given responsibility as a village elder. If it is true that his in law Mwenda went to his home at night and that he had a cut on the head, then he ought to have reported the matter to the police immediately. He went to report to the police when the accused and the said Mwenda were already fleeing from the scene after he found the deceased had died. The fact that his evidence and that of the accused is contradicted makes this court not to believe him.

15. PW3 who testified on behalf of the IO said that the scene of the crime was premises leased by Doris, Kauni and Mwenda for brewing of changaa. The accused did not deny that fact neither was the witness cross examined on the truth or otherwise of this fact.

16. In consideration of the evidence of PW1, PW2 and PW3 this court finds that the prosecution has proved its case beyond reasonable doubt. That the accused and her husband/boyfriend now at large hacked the deceased who was their changaa brewing partner to death.

17. The accused person is therefore found guilty as charged and is convicted according to Section 322(1) of the Criminal Procedure Code.

**HON.ANNE ADWERA ONG'INJO**

**JUDGE**

**DATED AND DELIVERED THROUGH MICROSOFT TEAM AT MERU ON THIS 30<sup>TH</sup> DAY OF JULY 2020.**

**HON.ANNE ADWERA ONG'INJO**

**JUDGE**

Accused: Present in person in open court.

Mr Wamache Advocate for accused.

Mr Kinoti: Court Assistant

**HON.ANNE ADWERA ONG'INJO**

**JUDGE**