



REPUBLIC OF KENYA

IN THE HIGH COURT KENYA AT MERU

CRIMINAL CASE NO.95 OF 2018

REPUBLIC.....PROSECUTION

VERSUS

LAWRENCE MURIITHI MICHENI.....ACCUSED

JUDGEMENT

1. The accused person Lawrence Muriithi Micheni 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. Particulars are that Lawrence Muriithi Micheni on the 6th day of October 2018 at Karingania Bar Meru Market in Imenti South Sub-County within Meru County murdered Duncan Mbaabu Eugenio Mwarania
3. PW1 was a watchman at the bar on the material night and he testified that the accused went to the bar and joined the deceased person and they started talking in low tones. That he heard the accused person asking for his balance from the deceased but he did not know what the balance was for. PW1 said that at 10.50 p.m. he told the patrons at the bar to leave so that he could close the bar at 11.00 p.m. As he was waiting for the remaining patrons to finish their drinks, he closed the front door and those remaining at the bar were to use the back door. Suddenly he heard the deceased cry out that he had been stabbed. That at that point the accused person escaped through the back door and rode his motorbike away from the bar. He said that Muriuki and another Lawrence took the deceased to the hospital.
4. PW2 was the bar attendant at Karingania bar on the material night and she confirmed that the deceased was at the bar, but she went to sleep at 10.55 p.m leaving the watchman to close the bar but shortly thereafter she heard noise in the bar but she did not understand what the noise was about because the people making noise were speaking in Kimeru which she did not understand and she thought it was due to drunkenness. The following day she learnt that a patron by the name Mbaabu had been stabbed at the bar and after three days she learnt the said Mbaabu had died and she was asked to go record a statement.
5. PW3 John Munene Murungi testified that he was Karingania Bar on 6th October 2018 when the deceased and the accused herein quarrelled and they were separated. that at 11.00 p.m the accused went to the washroom and on return he had removed his shirt and wrapped a knife on his hand using his shirt. PW3 said he saw the accused person stab the deceased after which he ran out of the bar and escaped using his motor bike. PW3 said that it is the accused who had stabbed him. It is PW3 who took the deceased to the hospital where he was admitted at St. Anne Hospital and the following day referred to Meru teaching and Referral Hospital where he died on 10th October 2018 when undergoing treatment. According to PW3 when the accused and the deceased were quarrelling the accused person demanded for his Ksh.100 which was given to him.
6. PW4 testified that the accused went to the bar at 10.00p.m and that the deceased approached the table where the accused was seated and demanded for Ksh.60 being charges for phone charging for the entire week. That suddenly the accused and the deceased started pushing each other and wanted to fight and the beer that the accused person was taking got poured on the table. That other customers at the bar told them to stop fighting over Ksh.60 and wait till the next day. At around 11.50 p.m the bar attendant had left some patrons at the club as they were leaving one by one and the front door was closed. PW4 said that as he was leaving the bar together with Kibaki, Lawrence and Mbaabu suddenly Mbaabu cried out that Kiiri had stabbed him. That when PW4 turned he found that the deceased had fallen down and the accused person escaped using his motorbike. PW4 together with the watchman and Munene took the deceased to St. Anne Hospital and also reported the assault at Kiandegge Police Station. PW4 said that the deceased was referred to Meru Teaching and Referral Hospital where he died on 10th October 2018. According to PW4 the accused and the deceased were friends and the deceased used to buy miraa from the accused person. He said the deceased was the one who was buying for them beer on the material night and that the accused person entered the bar when already drunk.
7. PW5 the deceased person's wife accompanied Koome and Kibaki to take the deceased to St. Anne's hospital from where they were referred to Meru Teaching and Referral Hospital. She confirmed that the deceased died on 10th October 2018 while undergoing treatment.
8. PW6 Dr. Kisilu produced post mortem report that was prepared by Dr. Wendo on 22nd October 2018 in which it was found that the

deceased died due to massive haemorrhage.

9. PC Kipkemoi Langat investigated the murder but his evidence was adduced on his behalf by Sergeant Festus Musyimi PW7. PW7 said that the accused was presented at the police station by an advocate.

10. When placed on his defence the accused person in his sworn statement said the deceased was his neighbour and that they had been together during the day and they agreed to meet in the evening at Karingania Bar. He said he went to the bar at 9.00 p.m and found the deceased drinking in company of Vincent, John Munene and Mukanga. He said the deceased bought for him beer and he also shared the miraa he had with the deceased and his companion. That at 11.30 p.m the deceased wanted to go home and he told the deceased to give him his money but the deceased responded that the beer he had bought the accused was enough to pay his debt. That the deceased held him by the collar and they were separated by Vincent. Mukanga then told them to get out of the bar. That were leaving the bar the deceased again held him from behind and he hit the deceased in the abdomen using a nail cutter which he was holding in his hand in order to release himself from the deceased's grip. He then boarded his motorbike and went home and didn't know the deceased was injured. The following day he learnt the deceased was taken to Meru General Hospital and as he was planning to visit him he learnt that he had died.

11. The accused said that he was taken to the police station by Advocate Majau and he was placed in the cells. He said he had never differed with the deceased who used to hire him to take him to different places.

12. 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.**

13. It is not in dispute that Duncan Mbaabu Eugenio Mwarania died when he was stabbed on the left backside of his chest. All the prosecution witnesses and the accused confirmed this fact. When Dr.Wendo conducted pathology on the body of the deceased on 22nd October 2018 he found a deep cut wound approximately 8cms long that extended to the lung tissue on the left back side of the chest and he established that death was caused by massive haemorrhage into the chest cavity. The ingredient as to cause of death has therefore been sufficiently proved by the prosecution.

14. From the observations of Dr.Wendo the injuries inflicted on the deceased were not accidental, they were as a result of the unlawful act of the accused person. The accused person in his defence claimed that he used a nail cutter to hit the deceased in the abdomen to free himself from his grip. The injury however was on the back of the deceased and not the abdomen and the depth of about 8cms could not have been caused by a mere nail cutter could not have inflicted such a long and deep stab that extended to the lung tissue. The accused and the deceased had had confrontations in the bar according to PW3 and PW4 .PW3 said the deceased and accused quarrelled but they were separated and that the accused person wrapped a knife on his hand using his shirt and it is suspected he used the same knife to stab the deceased when they were leaving the pub. PW 4 also said that he saw the accused and the deceased pushing each other but customers at the bar restrained them from quarrelling over Ksh.60 , but when they were leaving the bar the deceased suddenly cried that Kiri had stabbed him. It is therefore clear that the unlawful act that led to the death of the deceased was committed by the accused person.

15. Whether the unlawful act was actuated with malice aforethought, Section 206 of the Penal Code defines malice aforethought as follows:

“Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances

- a. an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;**
- b. knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;**
- c. an intent to commit a felony;**
- d. an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.”**

16. The accused and the deceased had been together during the day and agreed to meet at the bar in the evening. PW1 said that he heard the accused asking for his balance from the deceased but he did not hear what the balance was for. PW3 on the other hand said that it is the deceased who started demanding for his beer from the accused and they started quarrelling and they were separated. That the accused went to the toilet, removed his shirt and used it to wrap a knife on his hand and later used that knife to stab the deceased on the back. PW3 said that the cause of quarrel between the accused and the deceased was Ksh.100 for the miraa that the accused had sold to the deceased. PW4 on the other hand said that the cause of the fight was Ksh.60 which the accused owed the deceased for charging of his phone. PW4 said that the accused entered the bar at 10.00 p.m. when he was already drunk.

17. The incident took place at a bar where both the accused and the deceased were chewing miraa and taking beer and the fact that the

accused is said to have come to the bar while drunk makes this court believe that his actions may have been influenced by drunkenness and not actuated with malice aforethought. From the evidence of the witnesses they had confronted each other in the course of drinking. This court therefore finds that the accused is guilty of the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code and is convicted under Section 322(1) of the Criminal Procedure Code accordingly. Acquitted for offence of murder

HON.ANNE ADWERA ONG'INJO

JUDGE

DATED AND DELIVERED VIA MICROSOFT TEAM AT MERU ON THIS 30TH DAY OF JULY 2020.

HON.ANNE ADWERA ONG'INJO

JUDGE

In the presence of:-

Mr Igweta Advocate for accused

Ms Mbithe for state

Accused - present in person

Mr Kinoti – Court Assistant

Ms Mbithe for state

HON.ANNE ADWERA ONG'INJO

JUDGE