



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 71 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

PATRICK GATOBU MURIUNGI.....ACCUSED PERSON

JUDGMENT

1. The accused Patrick Gatobu Muriungi is charged with offence of murder contrary to section 203 as read with section 204 of the penal code.
2. Particulars are that Patrick Gatobu Muriungi on the 7th day of September 2019 at Muchege village in Imenti South sub county within Meru County murdered Gerald Kinoti.
3. The deceased was at his farm when according to PW2 the accused herein came and questioned why the deceased had stopped people hired by his mother from going through the farm. That when the deceased said he could not allow people to walk through the farm where he had just planted potatoes, the accused herein held the deceased by the collar and started beating him. That another of accused persons worker known Miriti came to scene wielding a panga and hit him on the left shoulder and he fell. That he held the panga and started struggling over the panga and the men who were carrying firewood separated them.
4. That when he stood he found the deceased had fallen on the ground and the accused was standing nearby. That when he tried to help the deceased up he was unable to stand. That he made him sit down and send for Kiogora, one of the workers who were planting potatoes.
5. That the accused went to bring his car to take the deceased to hospital but on arrival at Nkubu Mission hospital the deceased had succumbed to his injuries.
6. That the accused then carried the deceased to Nkubu Police Station where the accused was arrested and PW2 led police to visit the scene.
7. In cross examination PW2 said that he didn't hit the deceased. PW2 said that when he tried to separate the accused from the deceased but Miriti came with a panga to attack him and he fell. He said those who were carrying firewood for accused persons mother snatched panga from Miriti Mwititi ran from scene.
8. PW2 said Mwititi went underground and had not been arrested for assaulting him. PW2 testified that the accused was in Isiolo and it is his wife who called him. PW2 produced P3 which was issued and filled when he reported assault – ExP2.
9. PW3 said she and another lady was carrying firewood for Janet Gatobu's mother while 4 other men were hired to carry for Gatobu. She said she witnessed Gatobu and the deceased quarrel over path that they were using through the farm but didn't see them fight.
10. That it is when she came from collecting firewood the 4th time when she saw those who were carrying firewood go to scene where Gatobu and the deceased were quarreling and the deceased was on the ground with PW2 trying to help him up.
11. That the deceased was carried from scene but he didn't talk. That the accused didn't also respond when PW2 asked him what he had done. PW3 said that it is the accused who went for his car to take the deceased to hospital.
12. PW4 the brother to PW1 is the one who accompanied PW1 to Nkubu Mission Hospital where they found the body of the deceased. That on 9.9.2019 PW4 also identified the body of postmortem. He said the deceased died due to blood clot in the head.
13. PW5 accompanied the deceased to his farm in Mikumbune where they were to plant potatoes. That when he left the deceased applying fertilizer and went to another part of the farm when a woman went to call them to go and see what had happened to Dakitari. That on arrival

at scene he found Daktari had fallen to the ground. That they helped carry Daktari (deceased) from the farm to the road and he was carried in accused person's car and taken to hospital. He said he saw the accused bring the car that carried the deceased to hospital but he was a visitor in the area and didn't know his name.

14. PW6 the son to PW2 was send by the deceased to go and call PW2 and later his mother send him to Nkubu Mission hospital but when he failed to find his father PW2 he proceeded to Nkubu Police station where he found accused persons car and in it was the deceased body. That he led police to the scene of the offence. He said the only difference between Gatobu and the deceased was over land dispute.

15. PW7 John Kiogora Kungamia mobilized people to plant potatoes or the deceased persons farm on 7.9.2019

16. That while they were planting in the lower part of the farm at 3.00 pm a lady known as Grace went running and told them to the upper part and see what had happened as Kinoti had been killed by Gatobu. That on arrival at scene Kinoti was on the ground and PW2 has brother was trying to raise him. They assisted to carry Kinoti to Gatobus car and he was taken to hospital.

17. He said at the hospital the doctor announced Kinoti dead and they were advised to go and report at the Police station.

18. That on the way to police station accused threatened to stop the vehicle and kill PW2 as well.

19. PW8 Inspector Ribai was instructed by the OCS Nkubu Police station to investigate murder case reported by PW2, the accused and PW7 Kiogora.

20. That in company of 2 police officers they visited scene and PW7 showed them where the scuffle took place, photographs were taken and PW8 said the accused confronted the deceased when the deceased restrained his workers from passing through the farm where he was planting potatoes.

21. PW9 PC Charles Nyongesa accompanied IP Ribai and Sertgent Ngelechai to scene of murder led by PW2. He said they found evidence of disturbed ground and planting of Irish potatoes. PW9 said that there were stones at scene but other weapons were not recovered. Photographs of scene were taken and sketch plan drawn, Exp3(a) and (b), (c) and (d).

22. That accused who was at the scene was placed in cells. That on 9.9.2019 post mortem was conducted and it was established death was caused by severe head injuries.

23. PW10 Moses Baiyinia clinical officer examined PW2 and filled P3 which he produced assessing his injuries as hard – EXP2.

24. PW11 Dr. Kenneth Muthuri examined body of the deceased on 9.9.2019 at Nkubu Mission hospital. He observed right temporal region of the head had scalp depression with blood clot. There was also blood clots from the nose bilaterally. There was also intracranial haematoma. He established cause of death as severe head injury with intracranial haemorrhage secondary to blunt injury to the head. PW11 produced post mortem report EXP1.

25. PW12 CPL Gabriel Kosgey –scenes of crime officer produced photographs taken at scene of crime – Exp 3(a),(b)(d) as well as photographs of body – Exp4 (a) to (d). He produced certificate Exp5 and exhibit memo form – Exp6.

26. At the close of prosecution case the accused was placed on his defence and he gave sworn statement. He said that he was at work when he was informed his uncle the deceased had restrained his workers from using a path to take for them firewood.

27. He said the farm from which the deceased had stopped his workers from using belonged to his late father. That they went and told the workers to use the path which the deceased had stopped them from using. That it is at that time that his uncles PW2 and the deceased started beating him.

28. That when the deceased held him he also held the deceased persons hand in self defence. He said he was in between the deceased and PW2 and when PW2 wanted to hit him using a rungu he heard people screaming and when he looked behind and saw PW2 was aiming at him he missed and PW2 hit the deceased on the face and the deceased fell. He said Miriti was not at scene and it is not true that he hit the deceased. He said that when Kinoti was not able to stand from where he had fallen he told PW2 they should take him to hospital. He said that in company of PW2 and Kiogora they took the deceased to hospital but he was pronounced dead on arrival.

29. The accused persons witness Erick Mburugu testified that the deceased stood between Riungu – PW2 and Gatobu the accused herein.

30. That when PW2 wanted to punch the accused, the accused missed and PW2 punched the deceased and the deceased sat down. That PW2 told the accused to go and bring his car so that the accused could be taken to hospital.

31. That Pw2 and accused took Kinoti to hospital as they continued working. That when police visited scene at 6.00 pm he was interrogated on what happened at the farm. That police promised to return and record statements but didn't turn up.

32. DW2 said that when they were carrying the deceased he was not talking. He said there was no alternative path to the one which the deceased stopped them from using. He said they were on the way to carry firewood when the fight took place.

33. DW3 David Mugendi Miriti testified that he had been hired to work for Janet on 7.9.2019 together with 3 others. That while carrying firewood the deceased came at 11.00 am and told them not to use the path they had been using.

34. That PW2 also went to the far and joined the deceased. That at 3.00 pm the accused came and urged them to use the path the deceased had stopped them from using. That the deceased then held the accused and punched him. That when the PW2 wanted to join Kinoti the deceased to beat the accused the accused missed and the punch landed on the deceased who fell. DW3 said PW2 was behind the deceased when he hit him on the right side of the head. He said they carried Kinoti to the road and that he was not talking and even passed urine on himself when they were taking him to the car.

35. That while still carrying firewood PW2 returned to scene with police who promised they would call them to record statements but didn't.

36. DW3 said that Gatobu was facing Kinoti and it could not have been possible to punch him on the right side of the head. DW3 said the deceased was planting potatoes on the farm which the accused persons mother was previously using but which belonged to the deceased.

37. The accused person counsel filed written submissions to the effect that the prosecution was relying on circumstantial evidence as there was no eye witness to the murder and falls far short of proving that indeed the accused person caused the death of the deceased.

38. It was also submitted that the prosecution had not proved malice aforethought on the part of the accused. The defence counsel urged the court to acquit the accused person.

39. From the evidence on record and submissions by defence counsel the issues for determination is whether the prosecution has proved beyond all reasonable doubt that the accused herein committed the offence of murder as defined under section 203 of the penal code are:-

i. Fact of death;

ii. Cause of death

iii. That cause of death was as a result of unlawful act and/or omission.

iv. That the unlawful act and/or omission was actuated with malice aforethought

v. The unlawful act and/or omission actuated with malice aforethought was committed by the accused.

40. There is no dispute that Gerald Kinoti died. This fact has been confirmed by his wife PW1, his brother PW2 who was at the scene and all the prosecution witnesses as well as Dr. Muthuri PW11 who performed post mortem on the body of the deceased and concluded that the deceased died due to severe head injury with intracranial hemorrhage secondary to blunt injury to the head.

41. From the evidence of PW2 Grace as she and Monica and 4 other men were carrying firewood from the river for the accused and his mother there were people planting potatoes who told them not to go through the shamba.

42. That when the deceased arrived at the farm at 12.00 noon he also told them to use the path that goes through the tea plantation. That while they were eating at Janet's place Janet asked them why they were chased by Daktari but they didn't respond. That the deceased persons wife had by then made a phone call to Gatobu and reported that workers they had hired were restrained from using a path in Daktari's farm. That when they accompanied Janet back they found PW2 and the deceased at the farm and she asked them why they had disrespected her and she brought them up.

43. The evidence by Pw2 that the accused is the one who hit the deceased and he fell is contradicted by the evidence of the accused that PW2 was aiming a punch at him when he missed and the punch landed on the deceased right side of the head. The evidence of the accused is confirmed by that of his 2 witnesses that it is the deceased who was the aggressor and that while the deceased and the accused were struggling the PW2 joined in the fight and when he wanted to hit the accused person the punch landed on the deceased head person on the right. Apart from PW2, there was no other evidence confirming that the fatal blow originated from the accused person and not himself. In consideration of that finding this court finds that there is doubt as to whether the accused person is the one who committed the offence or not and in that regard the doubt is resolved in favour the accused person and he is acquitted under section 322 of Criminal Procedure code.

HON ANNE ADWERA ONG'INJO

JUDGE

RULING DATED AND DELIVERED AT MERU ON THIS 29TH DAY OF OCTOBER 2020

HON ANNE ADWERA ONG'INJO

JUDGE