



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**CRIMINAL CASE NO 55 OF 2017**

**REPUBLIC.....DPP**

**VERSUS**

**PAUL NJOROGE MAINA.....ACCUSED**

**JUDGMENT**

1. The Accused herein, **Paul Njoroge Maina** is charged with Murder contrary to **Section 203** as read with **Section 204 of the Penal Code**. In that on 4<sup>th</sup> December 2017 at Kamae village, Kahawa West Location, Kiambu County, he murdered **Simon Njathi**. He denied the charge and was represented by Ms Sebastian.

2. The prosecution case through seven witnesses was as follows. The Accused herein and **Simon Njathi** (the deceased) were friends and mutual friends of **Simon Gacheru Njeri (PW1)**. It appears that the threesome met for drinks on the morning of 4.12.17 and then left the drinking den and it seems that the party were to head to the home of **PW1**. For whatever reason **PW1** and the deceased proceeded and were first to arrive at the former's home at Kamae. At the time, the deceased was accompanied by a young woman known as "**Shiru**" who was reputed to be the girlfriend of the Accused.

3. Apparently, **PW1** operated an informal lodging which was a room near the gate to his compound. The deceased and Shiru were let into that room by **PW1** who then went off, evidently to facilitate the couple's privacy for the obvious romantic purpose. But before long, the Accused who, according to **PW1** had earlier booked the use of the room appeared. He managed to enter the room where a broke out between the deceased and the Accused, and then the combatants came out of the room into the open compound to continue exchanging blows while Shiru made good her escape. During the fight, the deceased then fell and became unresponsive. **PW1's** wife, Esther **Wangui Kariuki (PW2)** who was within the compound sent word to **PW1** to come home. When he arrived, **PW1** ordered the men off his compound.

4. The deceased was carried by the Accused to a shaded area outside **PW1's** homestead. The deceased upon being undressed was found to have two stabs, one on the chest and another in the abdomen. He was dead. Police were called to the scene and carried off the body after photography and initial inquiries. Both **PW1** and the Accused were arrested. On 8.12.2017 the pathologist Dr. Njeru (**PW5**) examined the deceased's body. She noted two stabs, one on the left chest wall, and the second on the peri-umbilical region. She also noted abrasions to the forehead and posterior trunk. Her conclusion was that death was due to chest injuries due to penetrating sharp force trauma i.e a stab. The Accused was subsequently charged.

5. In his sworn defence statement, the Accused stated that he and his friend, the deceased had gone for drinks at Kamae Inn on the material morning. They started drinking from about 10.30 a.m. but at noon, the deceased got a call from a lady friend and he left. The Accused remained at the bar. Shortly after, someone tipped him by phone that his girlfriend **Joyce Wanjiru** had been seen entering the premises of **PW1** while accompanied by the deceased. He knew the home as **PW1** was his friend. He therefore rushed there immediately. On arrival, he headed directly to the lodging room and knocked on the door. When the deceased eventually opened the door, the Accused could see his girlfriend on the bed, seated. A quarrel and then a fist fight broke out between the men, the deceased allegedly being the aggressor.

6. The Accused stepped out of the room with the deceased at his heels. The fist fight went on outside the room as the girlfriend fled. In the course of the fight, the deceased collapsed and was unresponsive. Whereupon the Accused carried him to the shade but **PW1** soon arrived and ordered both men to leave. The Accused carried the deceased to a shade outside **PW1's** compound. Presently police appeared and arrested him.

7. There is no dispute that the Accused and deceased were friends and that on the material date, they were caught up in a fight after the Accused caught the deceased in a compromising position with his alleged girlfriend, one Shiru, at an informal lodging room operated by their mutual friend **PW1**. That during the fight the deceased collapsed and died. The court must determine whether of malice aforethought, the Accused inflicted the injuries which resulted in the death of deceased. Section 206 of the Penal Code. Provides that:

**“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.”**

8. Concerning the cause of the deceased’s death, **PW5** who conducted the postmortem examination on the body of the deceased asserted that the deceased died from chest injuries due to sharp force trauma i.e. a stab. She had also noted about five soft tissue injuries to the trunk, hip and forehead, as well as another stab wound in the abdomen. **PW5** stated that the chest stab wound measured 6cm long and that there was about 2 litres of blood inside the chest cavity; that the membrane cover to the heart was torn and the aorta truncated.

9. While the soft tissue injuries may have resulted from the fist fight between the deceased and the Accused, the penetrating stab wounds were clearly inflicted with a sharp object. The said weapon was probably not the knife recovered by **PW7** as it had no blood stains on examination. Even **PW1** and **PW2** who for obvious reasons were reticent in their evidence, confirmed seeing the stabs on the deceased as he lay outside their compound.

10. Additionally, the deceased’s cousins **Paul Mbugua Njoki (PW3)** and **Alice Wanjiru Kimani (PW4)** stated that having been called by an anonymous person they proceeded to the scene of murder at Kamae and found the deceased’s body lying on the ground. It bore a stab on the left side chest. This too is the testimony of **PW7**. The only witness to the fight outside the house was **PW2** who said she did not witness the stabbing. However, according to the Accused person, and the circumstances, the fight between the men had started inside the room where the deceased was caught with the Accused’s girlfriend. Given the undisputed sequence of the transaction, and the evidence of **PW3, PW4, PW5 and PW7** there can be no doubt that the deceased was stabbed on the material date with a sharp object most probably while inside the lodging room and that he collapsed while exchanging blows with the Accused outside the said room.

11. The next question is who inflicted the said injuries. Clearly, only the Accused, his girlfriend Shiru and the deceased were inside the room when fighting broke out. The girlfriend quite naturally escaped as soon as she could and there is no evidence that she was involved in the melee. The Accused, in his own words, had rushed to the home of **PW1** upon learning that his girlfriend had been spotted entering the “lodging” at **PW1’s** with the deceased. Obviously, he was outraged that his friend, the deceased could act in such a treacherous manner and in all likelihood, may have armed himself with a knife or other sharp offensive weapon before proceeding there. His assertion that he merely exchanged fists blows with the deceased cannot be true given the evidence before the court. The court rejects these assertions and finds that the Accused is the person who stabbed the deceased.

12. There is credible evidence that the Accused, **PW1** and the deceased had been drinking together prior to the incident at the house of **PW1**. Given the testimony by **PW1** and the Accused himself, it does not seem that these parties were too intoxicated to know what they were doing, or that it was wrong, but they were probably tipsy or slightly inebriated. It did not help matters that the Accused was seemingly outwitted, having himself booked the ‘lodging’ owned by **PW1**, so that the deceased ended up with his girlfriend in the said lodging.

13. The circumstances of this case appear to negate malice aforethought. Section 202 of the Penal Code defines manslaughter as follows:

**(1) Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed manslaughter.**

**(2) An unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily harm.”**

14. Reviewing the proven facts before me, I am satisfied that the prosecution has established beyond reasonable doubt a charge of Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code against the Accused person. The court accordingly finds the Accused guilty and convicts him for the offence of Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.

**DELIVERED AND SIGNED VIRTUALLY ON THIS 26<sup>TH</sup> DAY OF OCTOBER 2020.**

**C. MEOLI**

**JUDGE**

**In the presence of:**

**For the DPP.....Mr. Kasyoka**

**For the Accused .....Ms. Sebastian**

**Accused...present ...**

**C/A: Nancy**