



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CRIMINAL CASE NO. 80 OF 2016**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**POLYCARP OCHIENG AMIMO.....1<sup>ST</sup> ACCUSED**

**KEN OCHIENG OGOLLA.....2<sup>ND</sup> ACCUSED**

**JUDGEMENT**

Polycarp Ochieng Amimo, the 1<sup>st</sup> accused person, and Ken Ochieng Ogolla, the 2<sup>nd</sup> accused person, are jointly charged with the murder of Dennis Minani Mwangi contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence show that the offence was committed on the 14<sup>th</sup> day of June 2015 at Dandora Phase IV, Njiru Sub County within Nairobi County. Each of the accused persons denied committing this offence. Mr. Otieno, learned counsel, represents both accused persons. The prosecution was conducted by several Prosecution Counsel with Mr. Solomon Naulikha being the last one to appear.

Nine (9) witnesses have testified for the prosecution and from their evidence it emerges that there were two rival groups within Dandora Estate Nairobi. There was the group called Pamoja Ghetto made up of between 25 to 30 members. It was involved with offering security to residents where they lived in Dandora Estate and collection of garbage. The deceased Dennis Minani Mwangi belonged to this group. So was Wycliff Ochieng Odera (PW1), Hilary Yosi Ambwele (PW2) and Martin Mikonyole Ambale (PW3). Martin was the chairman. There was another group identified by these three witnesses as belonging to Footballers. The two accused persons and one Thethe belonged to the Footballers group.

The bone of contention between the two groups giving rise to the events that resulted in this offence was allegations that one of the members of the Footballers group named as Derrick had stolen and had been beaten to death by members of public. The Footballers group accused the Pamoja Ghetto group of having killed Derrick. There is mention of threats from the accused persons to the Pamoja Ghetto that the latter group would also burry one of their members.

On 14<sup>th</sup> June 2015 Wycliff, the deceased and two others identified as Allan and Njoroge went to have lunch. A few metres from their office they were confronted by a group of about 15 people. The two accused persons with a third person named at Thethe were among the people in that group. Wycliff testified that the 2<sup>nd</sup> accused person, whom he called Remi, shouted in Kiswahili on seeing them: “*Ndiyo huyu mmoja wao*” loosely translated as “This is one of them”. The two accused persons and Thethe had knives at the time. They attacked the deceased and inflicted several stab wounds on him. Wycliff told the court that they stabbed the deceased three times. He told the court that the 1<sup>st</sup> accused Polycarp stabbed the deceased on the stomach; the 2<sup>nd</sup> accused whom he called Remi but identified him as 2<sup>nd</sup> accused in court stabbed the deceased on the chest while Thethe stabbed the deceased on the back.

Wycliff and his fellow group mates ran away to seek help. Wycliff told the court that he did not return to the scene. He later learned that the deceased had died.

Allan, the other person in the company of Wycliff ran to the offices of Pamoja Ghetto where he found Hillary and Martin. He informed them that the deceased had been stabbed. He named the two accused persons and one Thethe as the people who had stabbed the deceased. Martin, who was the chairman of Pamoja Ghetto with Hillary and Mwai went to the scene of stabbing. According to Martin the accused persons and Thethe had bloodstained knives. Martin said that the accused persons and Thethe confronted them. He said he and one Mwai ran away leaving Hillary at the scene.

Hillary testified that he saw Dennis lying on the ground on his stomach bleeding. Dennis called Hillary on seeing him and told him “*hawa mafala wameniua*” loosely translated as “these people have killed me”. Hillary said Dennis mentioned Remi (2<sup>nd</sup> accused) and that Dennis was holding his chest at the time. Hillary said he saw three stab wounds on the deceased: one on the chest, one on the back and one on the

stomach.

They took the deceased to their offices in Dandora Phase 4 and informed his wife Riziki (not a witness) who went to see the deceased. They organized for transport to take the deceased to Mama Lucy Hospital where he died the same day at around 4.00pm while undergoing treatment. Evidence shows that following the death of the deceased, the accused persons and Thethe went underground. They could not be traced.

The matter was reported at Dandora Police Station. Evidence shows that both groups went to the local AP post to report threats from the other group. The two groups met at the police post. The officers at the Post tried to reconcile the two groups and made them undertake to contribute towards medical expenses of the deceased. Hillary and his group were told to report the matter at Kinyago Police Post. They did so.

The accused persons were traced a year later at Mwiki Maisha grounds while at a Football match. With the help of police officers No. 71618 Cpl Fanuel Murunga, No. 92470 PC Kennedy Kiplimo Chirchir and others all from Mwiki Police Station the accused persons were arrested on 13<sup>th</sup> November 2016. Hillary and Martin were among the people who led police to Maisha grounds to arrest the accused persons. They found the 1<sup>st</sup> accused with other spectators and pointed him out to the police. The police arrested him. The 2<sup>nd</sup> accused was in the pitch playing football. Police arrested him after the match ended. Both were taken to Mwiki Police Station and placed in custody. They were transferred to Dandora Police Station where the matter was investigated by No. 230436 CIP Moses Mwangi (PW8). After the investigations the two were charged with this offence.

The accused persons were placed on their defence after this court considered the evidence by the prosecution and found that each of them had a case to answer. Each of them testified under oath. The 1<sup>st</sup> accused denied stabbing the deceased. He told the court that he did not know why he was being accused of stabbing the deceased. He said that no knife was recovered from him at the police station and that it was Pamoja Ghetto group that was armed but not their group. He testified that Pamoja Ghetto did not tell the police that the accused persons had stabbed one of their mates and that he was not arrested on 14/6/2015. He said he did not know who stabbed the deceased. He further testified that he lived in Umoja and not Dandora and that he did not know that the police were looking for him. He claimed that he had gone to the AP Camp in Dandora to report a case of assault after the Pamoja Ghetto group had assaulted the 2<sup>nd</sup> accused; that the Pamoja Ghetto were also at the AP Camp but he did not know what the group had gone to report.

On his part, the 2<sup>nd</sup> accused testified that on 13<sup>th</sup> June 2015 they were gathered for the funeral of the father of Michael, a group member, when a scuffle ensued. Michael told the people gathered to leave. He testified that as he was leaving he was accosted by Martin, Hillary, Josh and Minani, all members of Pamoja Ghetto group. He told the court that they beat him using clubs, iron rods and machetes. He said he received cuts, had a swollen left foot, injuries on the back and a dislocated arm. He said that they left him lying on the ground injured. He said he also lost his coat and phone. He said that he went to Brian's place and using Brian's phone he called the 1<sup>st</sup> accused and told him what had happened. He said he also called his girlfriend Akinyi who went to scene and assisted him. He said he went to report the matter at the AP Camp to report. He said the Pamoja Ghetto group also went to the AP Camp to report and due to the commotion that ensued police had to shoot in the air.

The 2<sup>nd</sup> accused denied stabbing the deceased and being involved in any other confrontation. He denied knowing the deceased and said he did not understand why he was accused of stabbing the deceased. He denied going into hiding and told the court that he never left Dandora Estate.

I have considered all the evidence by the prosecution and the defence of the accused persons. For this court to return a verdict of guilt in this case against each of the accused persons, there must be sufficient evidence to prove beyond reasonable doubt that the accused persons, with malice aforethought, did an act or omitted to do an act that caused unlawful death of the deceased Dennis Minani Mwangi. In other words the questions this court will be answering are whether the death of the deceased occurred; whether that death was unlawful; whether that death was caused by the accused persons; whether in causing that death the accused persons possessed malice aforethought.

The evidence of Charles Mwangi (PW4) the father of the deceased is that he found his son dead on arrival at Mama Lucy Hospital on the 14<sup>th</sup> June 2015. He told the court that he saw the body of his son and that on the 16<sup>th</sup> June 2015 he identified the body of his son Dennis to the doctor at Kenyatta University Mortuary where post mortem was performed. Charles Mwangi told the court that the body had injuries on the back, chest and ribs. Patrick Muthee (PW7), a cousin to the deceased received information from Charles Mwangi about the hospitalization of the deceased. He travelled to Mama Lucy Hospital where he found his uncle Charles crying. He learned that the deceased had died. The body of the deceased was transferred from Mama Lucy Hospital to Kenyatta University Mortuary. It was examined on 16<sup>th</sup> June 2015 by Dr Dorothy Njeru.

Dr Njeru was not able to testify in court. Dr Peter Muriuki Ndegwa (PW9) testified on Dr Njeru's behalf. Dr Ndegwa told the court as follows:

**“On 16/6/2015 at Kenyatta University Funeral Home Dr Dorothy Njeru performed post mortem on body of Denis Minani Mwangi identified by Patrick Thumbi Muthee and John Ngata Minani relatives of deceased. PC Muthiani from Dandora police station was in attendance. She noted the body of an African male adult 22 years old of good nutritional status medium physique 172 cm. She noted 3 stab wounds: 1) On the right below the ribs 4cm from midline and it had gone up towards middle at 6 intercostal space. 2) Stab wound at the back at left scapula region. 3) Stab wound on left lower thoracic region going upwards vertically. The 3 wounds were sharp on one edge indicating a one-edged weapon. There were no defence injuries. Internally, she noted left lung incised from the back, the pericardium had been incised. The right ventricular heart muscle had been incised. There was hemopericardium of 280 ml. All other systems were normal. She concluded that cause of death was chest injuries due to penetrating sharp force trauma (stab wounds). She reconstructed this post mortem report on 21.11.2016. She stamped and signed the report.”**

I have considered this evidence. There is no doubt that the deceased sustained three stab wounds on his body. The wounds were caused by a one-edged weapon which the doctor clarified to mean that the weapon was sharp on one edge. Mr. Otieno took witnesses to task to point out that there was no stab wound on the stomach as described by witnesses. What came out in evidence clearly shows that the deceased suffered three stab wounds on the stomach, back and abdomen or what the doctor calls the right side below the ribs. I am satisfied that the cause of death was as a result of stab wounds by a one-edged weapon. A knife is one such one-edged weapon. This evidence proves beyond reasonable doubt that Dennis Minani Mwangi died as a result of stab wounds inflicted by a knife. This satisfies the requirement that an unlawful death of the deceased has been proved beyond reasonable doubt.

The evidence is clear that the two accused persons and one Thethe attacked the deceased who was in the company of Wycliff, Allan and Njoroge. They stabbed him inflicting injuries that led to his death at the Mama Lucy Hospital. Wycliff who witnessed the stabbing knew the three attackers before. He knew them as members of Footballers Group. When Allan ran to inform Hilary and Martin that the deceased had been stabbed he mentioned the two accused persons whom he called Remi, Poly and Thethe as the people who had attacked the deceased. Hilary and Martin went to the scene where they found the two accused still there. The two accused and Thethe had knives and they also threatened Hilary and Martin. Hilary and Martin, just like Wycliff, knew the two accused persons as well as Thethe. After Martin and Allan ran away following the threats, Hilary remained at the scene. Dennis called him and told him that the three had attacked him and stabbed him. This evidence of Wycliff who was present during stabbing, Hilary and Martin confirms to me that the two accused persons were at the scene. They also admit having been at the scene although they deny stabbing the deceased and instead claimed that it was the deceased, Hilary and Martin, or the members of Umoja Ghetto who had attacked them.

I find the evidence of Wycliff, Hilary and Martin sufficient to prove beyond reasonable doubt that the two accused persons were at the scene of stabbing and did stab the deceased inflicting fatal wounds on him. I have no reason to doubt this evidence. I reject the defence of the accused persons that it was not them who had stabbed the deceased and making a finding that it was indeed the accused persons in the company of a man identified only as Thethe who stabbed the deceased leading to his death. The two accused persons were positively identified at the scene and were seen by Wycliff stabbing the deceased.

Malice aforethought in respect to murder is defined under Section 206 of the Penal Code thus:

- 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.**

The question is whether the accused persons possessed malice aforethought or intended to cause the death of the deceased. There had been bad blood between the Pamoja Ghetto Group where the deceased, Wycliff, Hilary and Martin belonged and Footballers Group where the two accused belonged. It was a matter of time before this animosity developed into something ugly. Despite this I find no evidence that the accused persons were acting in self-defence. There is no evidence to show that the deceased or the Pamoja Ghetto members ever attacked or threatened the accused persons. The defence of the accused that they were attacked by Pamoja Ghetto Group members is not supported by evidence and must be rejected.

My careful consideration of the evidence and the law leads me to a conclusion that the accused persons intended to kill or to cause grievous bodily harm to the deceased. I do not believe that one can attack another person using a knife without knowledge that such an attack can lead to death or grievous bodily harm. Therefore it is my finding that the accused persons possessed malice aforethought as defined under Section 206 (a) and (b) of the Penal Code.

In conclusion, it is my finding that all the ingredients of murder have been proved beyond reasonable doubt. Consequently I make a finding that the accused persons are guilty of murdering Dennis Minani Mwangi contrary to Section 203 as read with Section 204 of the Penal Code. I therefore pronounce Polycarp Ochieng Amimo and Ken Ochieng Ogolla guilty as charged. Orders shall issue accordingly.

**DATED, DELIVERED AND SIGNES THIS 30<sup>TH</sup> DAY OF NOVEMBER 2020.**

**S. N. MUTUKU**

**JUDGE**