



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 68 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

JEREMIAH MUTUKI KAMAU.....ACCUSED

JUDGEMENT

Jeremiah Mutuki Kamai was charged with the offence of murder contrary to section 203 as read with section 204 of the penal code.

Particulars are that Jeremiah Muluki Kamai on the 7th day of September 2017 at Anyalu Village, Luciuti Location in Igembe North Sub County within Meru County – murdered Harriet Kinya. The prosecution’s case is that the accused and the deceased had gone to pick miraa so that they could sell and use some of the proceeds to buy medicine for the deceased person’s daughter, PW1.

PW1 and her brother deceased to go after the accused and deceased at the farm and on arrival found both drunk. The 2 entered into accused person’s house which was on the farm and a commotion ensued PW1 said accused locked the house from inside and PW1 heard her mother scream in the house.

That accused refused to open the door when pW1 called him. She said they raised alarm and members of public came and they also went to call their aunty Joyce. When they returned in company of their aunt Joyce PW2 they found the deceased lying dead and was naked and was bleeding from the mouth ears. PW2 called Assistant Chief who came with police and deceased person’s body was collected.

PW1, PW2 and PW3 said when they returned to scene accused had escaped. They said the accused had jembe handle to handle to beat their mother. Joyce said by the time they went back to accused persons house the door was locked using a padlock and window was broken and they saw the deceased lying on the floor and bleeding from the mouth, ears and nose. She confirmed that the deceased was naked when she found her body lying on the floor.

PW2 confirmed that the deceased and accused used to take alcohol and that accused assaulted the deceased severally. She said police broke the door and entered together with the chief to collect the body.

PW3 reiterated what PW1 and PW2 said and said that accused killed his mother. He said that the jembe handle lay besides his mother’s body. He confirmed that accused was not at home when they returned with PW3.

PW4 the Assistant chief said she received phone call from Area Manager who reported that a woman had been killed by the accused. She said she found the deceased body in accused person’s house and members of public led her to where accused was hiding and he was arrested. The OCS was informed and police came to collect the body. She said the accused and deceased were habitual drunkards. She said the house where deceased person’s body was locked but window had been broken. She said accused was traced 100m away late in the night.

PW5 P.C Daniel investigated the offence of murder. He said he visited scene in company of CPL Ngatho and collected the body of the deceased and also rearrested accused from Assistant chief. He said the deceased was half naked and it appeared dusty with bruises. He said a piece of wood believe to have been used to assault the deceased was also recovered. He said he recorded statements and arranged for post-mortem to be conducted by Dr. Kirimi who prepared Report produced by Dr. Kirimi established cause of death as cardio-respiratory arrest. Secondary to severe head injury with multiple skull fractures and subdural haematoma.

When accused was placed on defence, he said in his sworn statement that he said the deceased a head from the market with money for the children to go to hospital but on return later with Ntongai on a motorbike, he found the deceased very drunk and didn’t have the money he gave for the children to go to hospital. That deceased entered the house and he followed her to go and rest. That deceased held him by the collar and he pushed her and she fell against the wall. He said he was also drunk. He said it is Assistant Chief and Sub Area Manager who went to the farm and told him someone had died in his house. He said he didn’t use jembe handle to hit the deceased and he had never beaten her before. He said he met with deceased at a drinking den and they started cohabiting since 2008. He said he didn’t know which part

of deceased body was injured. He said he went to sleep in the farm because he was drunk.

Mr Kaumbi submitted that the deceased and accused were drunk and a quarrel ensued because deceased used money meant for the children's medication in drinking alcohol. It was submitted that accused action were influenced with intoxication. He said there was no malice aforethought.

Mrs Mwathi for state submitted that the prosecution satisfied the 3 ingredients for the offence of murder as stated in CR. C. No. 14 of 2011 – at Embu – Republic vs Martin Kinyua. She submitted that there was no justification for killing the deceased. From evidence on record this court finds that the fact of death and fact that it was caused by the unlawful action of the accused person herein has been proved beyond all reasonable doubt. Whether the unlawful action was actuated with malice, PW2 said that a few days before the incident, accused had told her that he would give the deceased alcohol, get her drunk and kill her. PW1 said that accused and deceased came back when drunk and on entering the house a commotion ensued and accused locked the door and started beating the deceased. Accused didn't heed when PW1 and PW3 screamed and called him out to open the door. PW2 said a man and woman who responded to their alarm also came but accused refused to open and they went away. When PW1 and PW2 came they found accused was not at scene and he had locked the door from outside with a padlock. He went and hid in the farm.

Post mortem Report shows there were multiple fractures of the deceased person skull. This could not have been occasioned by a single fall against the wall as accused person alleges. The accused person went as far as undressing the deceased whose body was found half naked. She had bruises on left knee and right leg. This court finds that it is true that the deceased and accused were drunk but the conduct of accused was not of a person under influence of alcohol. Why would he lock the house from inside while beating the deceased? It means he wanted to execute his malicious intentions of killing the deceased without intervention from outside. When he had killed the deceased and left him lying on the floor of his house half naked he remembered to leave and used a padlock to lock the house from outside. A drunkard would not even remember where a padlock was. The accused went to hide in the farm 100m away. He didn't report of alleged 'accidental' murder of his lover.

This court finds that evidence against accused is sufficient to find him guilty for the offence of murder and he is convicted under S. 215 CPC

HON. A.ONG'INJO

JUDGE

24.1.2019

Before Adwera –Ong'injo J

Kinoti – C/A

Ms Mwaniki for state

Mr. Kaumbi Advocate for accused

Ms Munga holding brief – N/A

Accused- Present in person

Order

Judgement deferred to 25.1.2019 at 11.30 am

HON. A.ONG'INJO

JUDGE

25.1.2019 AT 12.15 P.M

Before Adwera Ong'injo J

Kinoti- C/A

Mr. Kaberia Advocate holding brief for Kaumbi for accused person.

Accused person – Present in person

JUDGMENT DELIVERED, DATED AND SIGNED IN COURT ON 25TH DAY OF JANUARY 2019.

Ms Mwaniki state

I don't have accused person record.

Mr. Kaberia

Mr. Kaumbi can mitigate on behalf of accused person. We can take a date.

Order

Mention 21.2.2019 for Victim Impact Statement and mitigation before sentencing. Accused remanded in custody.

HON. A.ONG'INJO

JUDGE