



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 33 OF 2011

REPUBLICPROSECUTOR

VERSUS

JOHN PAUL KINOTI MURITHI.....ACCUSED

JUDGEMENT

[1] **JOHN PAUL KINOTI MURITHI** (“the accused”) has been charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence being that on the 2nd day of March 2009 at Kionyo Market in Imenti South District within Eastern Province murdered **MAURICE MUGAMBI MIRITHI** (“the deceased”). The prosecution called five witnesses to establish its case.

[2] **PW1 Nicholas Kirimi Gichuru** testified that on the 2nd March 2009 he left home and went to Joy’s club in Kionyo Market. When he entered he found the accused, deceased and other people. The deceased welcomed him at his table by buying him a cup of keg. The deceased was not drunk as he had just closed his matatu business but the accused who was seated at the other table was. The accused left his table came and slapped him for no reason. He moved out as he realized that he would not be able to confront the accused as he was not strong enough. But the accused caught up with him on the corridor of the club where he held him by the back and when he turned around the accused stabbed him with a knife on the left side of the chest. He fell down while the accused walked back into the club. Five minutes later Douglas Mwititi found him and helped him by taking him to the nearby dispensary. While he waited to be treated the deceased was brought in stabbed severally with a knife. They were taken to Consolata Hospital Nkubu but on arrival the deceased was pronounced dead.

[3] **PW2 Versaio Muthengi** he stated that on the material day he was at the bar with the deceased and Kaberi where he was taking some soda while the others took alcohol. When they heard noises outside the deceased went to see what was happening. About 3 minutes later they heard the deceased screaming that he had been stabbed. He went out with Kaberi where they found the deceased on the verandah. From where they were seated to the verandah it was about 2 meters away. The deceased said that he had been stabbed by Paul Murithi. He saw Paul leaving when he got out and then the deceased told him that it was Paul who was about 5 meters away when he saw him. Mugambi then told him that he had been stabbed by a knife. He had been stabbed on the stomach as the intestines were exposed. He took him to the nearby clinic but died on his way to the hospital. When they were going home they met Kirimi who said he was also stabbed by Paul Murithi.

[4] **PW3 Douglas Mwititi** he averred that on the material day left home at around 7 pm he went to a bar at Kionyo market which has no name and drunk a glass of beer. He found many people some standing at the counter and some seated. He found many people including Mugambi, Kirimi and Paul. The accused was standing at the counter with Kirimi, Mugambi and others. **PW3** drank beer and went to stand at the door. He saw Paul push Nicholas Kirimi outside and he told them not to fight. Later he found Kirimi who told him that he has been stabbed and showed him where. He carried him to the nearby clinic but the people he found told him to take him to hospital. On going back he found the club closed. Mishuku whose shop is nearby told him that Paul had stabbed and beaten Mugambi. He got help from the people who had gathered and the two were taken to hospital. Later on he heard that one of them had died.

[5] **PW4 Martin Kimathi** testified that he is the brother of the deceased and on 10th March 2009 he went to Nkubu Hospital Mortuary where the post mortem was done by Dr. Macharia.

[6] **PW5 Dr. Irene Gichunuku** produced the post-mortem report done. It was observed that the external appearance of the body had penetrating abdominal injury on the left lumbar region 7.5 cm in length and gut seen protruding through the injury. The cause of death was hypovolaemic shock secondary haemorrhage secondary laceration of the spleen due to a penetrating abdominal injury.

[7] At the end of the prosecution case, the accused gave a sworn testimony. **DW1 John Paul Kinoti Murithi** told the court that the deceased was his neighbor. On the material day 2.3.2011 after he milked the cows he took the milk to Serena Hotel at Kionyo market. He arrived at the hotel at 7.00PM where he watched news. Thereafter he left the hotel and went to John’s bar which was behind the hotel where he bought two bottles of beer. Among the other patrons there were Maurice Mugambi, John Murithi and others who were not known to him.

[8] An exchange ensued between him and Mugambi because he declined to buy him beer. When the exchange started he left and went to

pick the milk containers and went back home. He was arrested on 22nd June 2011 for malicious damage and was taken to Mitunguu police station. While in prison he was charged with the offence of murder of Maurice Mugambi. He affirmed that he did not commit the murder of the deceased

[9] Written submissions were filed at the close of defence and the accused person in his submissions submitted that the prosecution failed to prove that he caused the death of the deceased. That none of the witnesses saw the accused stab the deceased. The investigation diary shows that the first report made about this incident was by Patrick Mugambi who brought PW1 and deceased to the police station to report the incident which according to the report is that they were assaulted by unknown persons. PW1 and the deceased were present and they would have told the police who the assailant was. But he was arrested two years after the incident at the same market where the incident occurred but for another offence. First reports made by police after the incident are very crucial. He relied on the Simiyu & Another v Republic [2005] 1KLR. The only evidence is the dying declaration from PW2 who claims that the deceased told him that it was the accused. It is unsafe for the court to convict based on it. He relied on the case of Pius Jasanga s/o Akumu vs. Republic [1954] EA 331.

[10] The offence of murder is defined under **Section 203 of the Penal Code** as:-

“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”

From this definition the four key ingredients of the offence of murder which the prosecution must prove beyond reasonable doubt are:

1. The fact and cause of death of the deceased
2. Proof that the deceased met his death as a result of an unlawful act or omission on the part of the accused
3. Proof that the said unlawful act or omission was committed with malice aforethought.

[11] With regard to the first issue on the fact and cause of death of the deceased the prosecution witnesses told the court that the deceased was stabbed. PW4 affirmed that he went to the mortuary where he identified the body and post-mortem done. According to the post-mortem report produced by PW5 the cause of death was hypovolaemic shock secondary to hemorrhage secondary to laceration of the spleen due to a penetrating abdominal injury. Accordingly, the fact and cause of death of the death of the deceased has been proved.

[12] On the second issue which is proof that the deceased met his death as a result of an unlawful act or omission on the part of the accused person, that is *actus reus*. From the prosecution evidence presented it is alleged that the accused person stabbed the deceased when he stepped out of the bar. According to PW2 he stated that when he heard screams he ran out and found the deceased who told him that he had been stabbed knife. As he was approaching the deceased he saw the accused ran off. The deceased told him that it was the accused who stabbed him. According to DW1 he stated that when an exchange arose between him and Mugambi he left and went back home.

[13] PW1 was stabbed by the accused person who pushed him out the bar. When the deceased heard PW1 revise alarm outside the bar he rushed out to find out what was happening. Shortly thereafter, PW2 and one Kaberi heard the deceased scream and when they followed, they found him at the verandah having fallen and had a stab on the stomach with intestines exposed. The deceased told them it was accused who had stabbed him.

[14] PW2 said he saw accused 5 metres away leaving the scene. PW1 also said when the deceased responded to his screams when accused stabbed him he saw accused person stab the deceased as well. Both PW1 and the deceased were assisted to go to hospital but the deceased died on the way. The accused admits having been at the bar and admits having a confrontation with the deceased but that he left.

[15] The evidence of PW1, PW2 and the accused is corroborative of the fact that accused committed the murder of the deceased herein. The deceased also told PW2 that the accused had stabbed him. This court finds that the prosecution has proved its case beyond all reasonable doubt. Accused is guilty and is convicted under S. 215 C.P.C.

HON. A.ONG'INJO

JUDGE

JUDGEMENT DELIVERED, DATED AND SIGNED THIS 23RD DAY OF JANUARY 2019

In the presence of:

CA:-Kinoti

Accused:- Mr. Murage for state

State:- Ms Nelima Advocate for accused.

Mr. Murage

We don't have to accused persons past records.

Ms Nelima Advocate for accused in Mitigation

I don't have my file. I pray for another date for mitigation.

Order

M. 21.2.2019 for Victim Impact Statement and Mitigation.

HON. A.ONG'INJO

JUDGE