



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL CASE NO 27 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

FRANCIS MAINA NJERI.....ACCUSED

J U D G M E N T

1. The Accused in this case, **FRANCIS MAINA NJERI**, is charged with **murder** contrary to **section 203 as read with section 204** of the **Penal Code**. It is alleged in the information dated 22/10/2014 that on 05/10/2014 at Kang'etho Village, Miriira Location within Murang'a County he murdered one **FRANCIS GITUA MWANGI**.

2. The Accused pleaded not guilty and the case went to full trial. The prosecution called nine (9) witnesses. In his own defence the Accused gave sworn testimony. He did not call any other witness. I have considered the testimonies of all the witnesses.

3. The prosecution case was as follows. On 05/10/2014 at about 10.00 pm **Anthony Mbugua Mwangi** (PW1) entered Silent Bar near **Matithi Trading Centre** to retrieve his mobile phone which he had earlier left there to charge. He then went outside the bar and found two people quarrelling. He knew them well as they were his village mates and he had grown up together with them. They were Francis Maina (the Accused) and Francis Gitua (the Deceased in this case).

4. As they quarrelled the Deceased asked PW1 to tell the Accused not to bother him. PW1 told the accused to stop bothering the Deceased and leave. The Accused stopped bothering the Deceased for a moment. He then removed a knife from a back pocket and stabbed the Deceased in the side of the abdomen in a cutting motion that opened up the Deceased's belly from one side to the other.

5. When he saw what had happened PW1 screamed. People rushed out from inside the bar and held the Accused who was still holding the knife. They disarmed him. PW1 then noticed that the Deceased's intestines were hanging out. The Accused then ran away into the night despite efforts by some people to chase and apprehend him.

6. PW1 and others then tried to give the Deceased first aid. He was then taken to hospital by others. PW1 went home.

7. PW1 further testified that outside the bar there was security light in the form of a small electric bulb supplied by mains electricity. It was by that light that he saw all he testified to. He clarified that when the Accused removed the knife, he (PW1) was standing between him and the Deceased. The Accused then pushed PW1 who fell down. He then stabbed the Deceased while PW1 was still down. Before he was stabbed, PW1 further testified, the Deceased said in Kikuyu,

“God, Maina do you want to stab me with a knife?”

8. PW1 testified that he saw the knife clearly. He identified it in court.

9. In cross-examination PW1 stated that he did not know what the quarrel between the Deceased and the Accused was about. As they quarrelled, the Deceased held a beer bottle from which he was drinking. In the other hand he had a glass. Even before he had entered the bar to get his phone, PW1 said he had seen the Deceased and the Accused quarrelling outside. They were trading words at each other and physically jostling, with the Accused pushing the Deceased about.

10. PW1 further stated in cross-examination that at one point the Accused had been knocked down as he was being disarmed. He denied seeing the Accused down with the Deceased standing over him. He also denied that there was any *mutura* (traditional sausage) butchery near **Silent Bar**.

11. As for the security light outside the Bar, PW1 stated in cross-examination that it was mounted high near the roof, and that it was a small incandescent bulb. PW1 stated that initially, after stabbing the Deceased, the Accused had tried to run away but stopped about 6 feet from

the Deceased. He subsequently fled after he was disarmed.

12. In re-examination PW1 stated that he was one of the people who disarmed the Accused.

13. **Roseline Karimi Njeru** (PW3) was the owner of **Silent Bar**. She testified that on 05/10/2014 she opened the bar. Later, about 08.00 pm, the Deceased, whom she knew well as her customer, came to the bar. She served him beers as usual. At about 10.00 pm the Deceased said he was leaving home and asked PW3 to allow him to take a bottle of **Tusker** beer with him and pay for it the following day. She agreed. He then left. After some minutes PW3 heard the voice of PW1 outside asking in Kikuyu, **"What are you quarrelling about?"** PW3 then heard the voice of the Deceased reply in Kikuyu, **"He has stabbed me with a knife."**

14. PW3 then rushed outside. She found also outside the Accused whom she knew as a customer and neighbour. He was lying down on his back holding a knife with his right hand.

15. PW3 testified that she saw all this by a light that was on the building, about 3 meters from the door-way of the bar. It was a fluorescent light. PW3 further testified that the Accused was lying about 5 meters from the bar door-way. PW1 was also lying down but on his side, behind the Accused.

16. PW3 also observed that the Deceased was also present. He was kind of squatting and holding the ground with one hand. He was nearest the bar door-way.

17. PW3 asked the Deceased what the matter was. He did not reply but lifted his shirt with one hand. PW3 then saw the Deceased's intestines hanging out. She was shocked and ran back into the bar to seek help from the other customers. She went back outside with them. She observed that the Deceased had now fallen down and the Accused had disappeared. PW1 was trying to assist the Deceased. Another customer called Daniel Mureithi then took the Deceased away to hospital in his car.

18. PW3 did not accompany them. She closed up the bar then followed them to **Murang'a District Hospital** on a motor-bike. It was then about 10.45 pm. She found that the Deceased had been taken to theatre. The following morning she went back to hospital and found the Deceased in the ward. He had difficulties talking. She continued visiting the Deceased in hospital until he died.

19. PW3 finally testified that she never saw the knife that the Accused had well enough to be able to identify it.

20. In cross-examination PW3 stated that she had not seen the Accused in the bar that evening. She also stated that the Deceased had been drinking **Tusker** beer, and had drunk in the bar only two bottles of it. She further stated that PW1 did not take any alcohol in the bar, and he was not drunk. He was sober.

21. Finally, PW3 stated in cross-examination that in the hospital he had asked the Deceased a number of times what had happened leading to his being stabbed, but that he was never able to tell her as he was in a lot of pain.

22. **Margaret Gitua Njoki** (PW2) was the Deceased's widow. She was informed by some people about the Deceased's stabbing. She went to hospital where he had been admitted. He was never able to talk and tell her anything in hospital.

23. **Bernard Kagoto** (PW4) was the local assistant chief. When he was informed of the stabbing of the Deceased by a known person he organized his Administration Police officers in order to look for and apprehend the suspect whom he knew. On 06/10/2014 he and his officers arrested the Accused at his brother's rented house in Matithi Village. They took him to the scene of the alleged stabbing at **Silent Bar**. There the officers recovered a knife near a fence which was shown to him. He identified it in court.

24. PW4 and the officers then took the Accused to **Murang'a Police Station** where he was re-arrested and placed in the cells. Later PW4 visited the Deceased in hospital. He knew him.

25. In cross-examination PW4 stated that he was not present at the exact moment and place when the knife was recovered. He also stated that at hospital the Deceased was unable to tell him anything because he was in a lot of pain.

26. **Michael Kwendaka Mwangi** (PW5) and **Samson Kinyanjui Mwangi** (PW6) were respectively the maternal uncle and younger brother of the Deceased. They identified the Deceased's body for purposes of post-mortem examination.

27. **Cpl Johnson Kariuki** (PW7) was one of the Administration Police officers who, with PW4, arrested the Accused. He was also the officer who recovered the knife at the scene of the alleged stabbing. He stated in cross-examination that PW3, PW4 and another officer called APC Stephen Ndwangu were present when he recovered the knife. The knife had blood stains, and he handled it by its handle with a handkerchief. He subsequently threw away the handkerchief. He was with the knife for about 2 hours before he handed it over to the crime officer at **Murang'a Police Station**.

28. **PW8 (Cpl Zablon Mutoka)** was the investigating officer of this case. He produced in evidence the knife (**Exhibit P1**). He did not submit it for forensic examination. He explained that he had learnt that the knife had been rained upon the whole night. He caused the Accused to be charged. He visited the Deceased at hospital two times; he was never able to talk to the officer.

29. In cross-examination he stated that he regarded **Exhibit P1** as the murder weapon. The knife had no blood stains when it was handed over to him. He did not see any blood stains on it or on the white paper it was wrapped in. Because the knife had been rained upon overnight, and had also been incorrectly handled by a number of persons, he formed the opinion that submitting it to forensic examination would not yield any useful result.

30. **Dr Raphael Gachiri** (PW9) was the doctor who performed the post-mortem examination of the Deceased's body on 17/10/2014. It had two surgical wounds in the abdomen and a stab wound on the left side of the abdomen. Upon opening up the Deceased's abdomen PW9 noted the presence of pus which indicated that infection had set in subsequent to the stab wound. His opinion was that death was due to **septicaemia** (infection throughout the body) secondary to the stab wound. He prepared and signed the **post-mortem** report which he produced in evidence as **Exhibit P2**.

31. As already indicated the Accused gave sworn testimony in his own defence. He testified that he knew the Deceased well; they were from the same village and were age-mates who grew up and went to school together. Their homes were only 100 meters apart, and they were friends who visited each other at home and drunk alcohol together.

32. The Accused further testified that on 5th October, 2014 he spent the day at Sagana with PW3, her husband and children. He had gone to assist her to collect stock for her bar. They had all arrived at Sagana at about mid-day. They left Sagana at about 4 pm and arrived at PW3's bar at about 5 pm. There PW3 gave her husband and the Accused food. Then he and the husband called Jean Mbaria started drinking alcohol at the bar.

33. At about 7.30 pm the Deceased came to the bar. He appeared drunk from his speech and staggering. He sat at the counter and ordered for 2 beers. At about 8.30 pm PW3's husband left. He (Accused) remained in the bar.

34. The Accused further testified that after a short while he left the bar to go home. Just outside the bar there was a meat/soup business. He bought himself some soup. As he was drinking it the Deceased came out of the bar and demanded of the Accused that he tell him where he had been with PW3 that day and what they had been talking about. The Accused told him to go ask PW3's husband.

35. The Deceased then slapped the Accused hard as a result of which he (Accused) fell over with the plastic chair he was sitting on. The Deceased then stepped and stomped on his face and head. The two then struggled and the Accused managed to run away. When the Deceased slapped him he (Deceased) had been armed with a glass beer bottle, but he did not hit him with it. It fell and broke. As they struggled the two had toppled over the meat service table. He (Accused) had ran all the way to his home about 400 meters away, and he slept.

36. After a while, at about 10.30 pm many people came to his home. They were asking for him. He opened his door and ran away because they were armed with sticks and he feared that they might assault him.

37. The Accused further denied that he ever stabbed the Deceased with a knife. He stated that he was not armed with a knife. He knew PW1 well as a village-mate with whom he drank alcohol on occasion. He never saw him at the bar or anywhere near there on the evening of 5th October, 2014. He saw him as he (Accused) was arrested the following morning. He (Accused) got rather drunk from the 2 bottles of spirit that he took the evening in question. He did not know how the Deceased sustained his injury. But he recalled that as the two of them struggled he had hit him once in the face.

38. In cross-examination the Accused stated that the bar had electric lights; that the Deceased had followed him outside; that when the Deceased confronted him, both were in about the same state of inebriation; and that PW3 did not speak the truth when she said that she saw the Accused standing over the Deceased. He (Accused) did not see PW3 as he ran away.

39. Finally, the Accused stated that indeed he and the Deceased fought; but he did not know how he received his injury.

40. In re-examination the Accused denied that he was arrested in a rental room. He said he was arrested on the road.

41. That was the totality of the evidence placed before the trial court. From it some facts are not in dispute –

(a) On the evening of 5th October 2014 the Deceased received a stab/slash wound to his abdomen outside PW3's bar. Their injury was so severe that his intestines came out.

(b) The Deceased died a few days later from **septicaemia** (a generalized infection throughout his body) secondary to the wound in the abdomen.

42. The issues that remain to be decided by the court are as follows:

(a) Who inflicted the Deceased's injury to the abdomen?

(b) Was the injury caused with malice aforethought?

43. The testimonies of PW1, PW3 and the Accused himself (DW1) place the Accused at the place where the Deceased was stabbed. PW1 had observed the Accused and the Deceased quarrelling as he entered PW3's bar. Shortly thereafter as he came out he found them still quarrelling. It was the Accused who was the aggressor and pushing about the Deceased.

44. At the request of the Deceased PW1 intervened and requested the Accused to stop bothering the Deceased and go away. He stopped bothering the Deceased for a moment; but he then pushed away PW1 and stabbed/slashed the Deceased in the abdomen.

45. Upon PW1 raising the alarm PW3 came out of the bar and found the Accused, the Deceased and PW1. The Accused was lying down on his back holding a knife in his right hand. PW1 was also lying down, on his side, behind the Accused. The Deceased was squatting and

holding the ground with one hand. On PW3 asking him what the matter was he lifted his shirt with one hand and PW3 saw the Deceased's intestines hanging out. PW3 then rushed back inside the bar and immediately came out with some patrons. They found the Accused had already escaped.

46. This court was impressed by the testimony of PW1. He had not drunk any alcohol and was sober. He had observed the Accused and the Deceased outside the bar quarrelling as he entered to retrieve his phone. He observed them again shortly thereafter as he left the bar after picking his phone. There was ample lighting outside the bar; besides both the Accused and the Deceased were persons he knew well.

47. PW1 observed that the Accused was the aggressor who was pushing the Deceased about. The Deceased asked PW1 to intervene and tell the Accused to stop bothering him. PW1 did so and the Accused appeared to stop momentarily. But he then removed a knife and with it stabbed/slashed the Deceased in the abdomen and mortally wounded him.

48. PW1 was an eye-witness who saw all that happened between the Accused and the Deceased. Just before the Accused stabbed/slashed the Deceased he pushed away PW1 who fell down. Upon the Accused stabbing/slashing the Deceased, PW1 screamed and this brought out PW3 immediately. She found the Accused still holding his knife and Deceased in the process of going down after he was injured. She observed PW1 was lying down. PW1's testimony was that he had been pushed down by the Accused to enable him (Accused) to attack the Deceased with the knife.

49. The Accused's testimony is obviously a contrived attempt to explain away the difficult situation he found himself in. He had been clearly observed by PW1 trying very hard to provoke the Deceased into a fight. The Deceased was not willing to enter into a fight with him. PW1 then had intervened at the request of the Deceased. The Accused's reaction after a momentary pause, was to violently push away PW1 and then stab/slash the Deceased in full view of PW1. PW3 then came onto the scene and found the Accused standing over both the Deceased and PW1 while still holding his knife. He clearly had a lot of explaining to do, hence his long contrived story, which I reject.

50. There was no mutura/soup place next to the bar. It was a figment of the Accused's imagination. He was not attacked by the Deceased as he drunk any soup. It was a lie. The Deceased was not drunk and aggressive. It was another lie. As stated by PW3 the Deceased had drunk only two beers and took a third one with him as he went out to go home, and he was not drunk.

51. The other lie of the Accused was that he never saw PW1 at the scene. He had to deny seeing him because he was the eye-witness who had been him mortally injure the Deceased. To his credit the Accused acknowledged that he knew PW1 well and occasionally drunk alcohol with him. He did not suggest any reason why PW1 might falsely testify against him.

52. From the evidence on record, I find proved beyond reasonable doubt that it was the Accused who inflicted the Deceased's injury from which he subsequently died. I reject the self-serving story that the Accused wove to try and explain his difficult circumstance.

53. The viciousness with which the Accused stabbed and slashed the Deceased in the abdomen leaves no doubt at all that his intention as to cause him grievous bodily harm or kill him. Malice aforethought as defined in **section 206** of the **Penal Code** is proved beyond reasonable doubt.

54. In the result I find the charge of **murder** contrary to **section 203 as read with section 204** of the **Penal Code** proved beyond reasonable doubt and I hereby convict him of the same. It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 29th DAY OF MARCH 2019

H P G WAWERU

JUDGE