



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUNGOMA.

CRIMINAL CASE NO. 31 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS.

KHALID SALIM MOHAMMED.....ACCUSED

JUDGMENT.

The Accused Khalid Salim Mohammed was charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code (cap 63) laws of Kenya. The particulars are; **on the 19th day of October, 2016, at Mjini village, Musikoma location within Bungoma County murdered WANJALA KIOKO.**

The case for the prosecution is that on 19.10.2016 Pw1 James Wafula Wekesa was playing football on a field when he saw accused and deceased who were about 50 metres away quarrelling. He then saw accused running away. He and others ran there and found deceased had been stabbed by the accused and was lying down. The accused was armed with a sword. The accused then started running away but members of public chased him and arrested him. The deceased was taken to Damiano Hospital where he was referred to Bungoma District Hospital where he died while undergoing treatment. The accused who had been arrested by members of Public was taken to Bungoma Police Station where he was later charged with present offence.

The accused gave sworn evidence. He testified that on 19/10/2016 he was in Bungoma town when a friend of his informed him that he was being looked for at Mjini area on allegations of stabbing somebody. He went to the police station. While at the Police station a person came and reported that accused had stabbed the deceased. He had seen the deceased on that day at 10a.m. and had given him a cigarette. He said the person recorded as the one who had stabbed him was one Khalid Amani Mohammed who is not him.

Pw2 Masiloma Enos Wekesa testified how upon learning the Accused had stabbed deceased went to look for accused. On seeing them he ran and locked himself in a toilet. They removed him from the toilet and took him to the police station.

Pw5 Hussein Wangila testified that on 19.10.2019 at 6p.m. he was with deceased at the Kiosk Hotel of Kaluche when accused came and alleged deceased had stolen his Mobile phone. The accused who left came back armed with a sword and stabbed deceased on the chest and ran away.

Pw6 Dr. Raymond Damba performed a Post Mortem on body of deceased where he observed that it had a stab wound on the left mid back, chest with a penetrating injury to the heart. He formed opinion that cause of death was due to Cardio – vascular arrest due to stab wound.

M/s Wakoli advocate for the accused submitted that in a charge of murder, the prosecution; is under legal duty to establish beyond reasonable doubt that it was indeed the Accused person who inflicted injury to the deceased, the deceased died from the said injuries and the accused had malice aforethought at the time of inflicting the injury.

Counsel submitted that Pw1 in his evidence testified that he did not see accused stab the deceased; Pw5 in his evidence stated that the incident occurred in a house which contradicts the evidence of Pw1 and therefore his evidence is unreliable.

The accused is charged with the offence of murder Contrary to Section 204 of the Penal Code. **Section 204 of the Penal Code. Section 203 penal code provides. 203: Any person who of malice afore thought causes death of another person by unlawful act or omission is guilty of murder.**

204: Any person convicted of murder shall be sentenced to death.

In Lodwar High Court, *Republic Vs. Joseph Ekai Lomongin* [2018] eKLR this court stated that in an offence of murder the prosecution must establish the three ingredients of the offence;

- 1) The killing or fact of death of the deceased;
- 2) existence of malice aforethought or *mens rea* and
- 3) the unlawful act or omission on the part of the accused the *actus reus*.
- 4) That it is the accused who inflicted the injury.

Death and cause of death is not in dispute. Pw6 Dr. Raymond Damba confirmed that the deceased had several stab wounds, on the chest and back with one penetrating wound causing injury to the heart which was the cause of death.

The issue is who caused the injury? Pw5 Hussein Wangila testified that he was in the Kiosk Hotel with the deceased when accused came and alleged that deceased had stolen his mobile phone. A quarrel ensued. Accused left only to come back armed with a sword and stabbed the deceased on the chest. The accused stabbed started running away and people chased him. Among the people who chased him was Pw2 Masiloma Enos Wekesa who arrested him in a latrine where he ran to and took him to the police station. The accused defence is that he did not stab the deceased; was not at the scene and that he only went to the police station when he heard of the rumors that he had stabbed the deceased.

The evidence of Pw1 James Wafula Wekesa that he saw the accused struggling with the deceased; and the evidence of Pw5 Hussein Wangila that after an initial fracas the accused went away and came back with a knife and stabbed deceased on the chest. The incident occurred at around 6p.m., the witnesses knew the accused well and there is no possibility of mistaken identity. I am satisfied that on the evidence the accused was properly identified as the person who stabbed the deceased, inflicting the injuries from which the deceased died. I do not find the accused's defence that he was never at the scene truthful and therefore reject it.

In the result, I am satisfied that the prosecution has established all the ingredients of the offence of murder. I find accused guilty of Murder Contrary to Section 203 as read with Section 204 of the Penal and convict him accordingly.

Dated and Signed at Bungoma this 24th day of July, 2019.

S.N. RIECHI

JUDGE