



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA

AT BUNGOMA.

CRIMINAL CASE NO. 24 OF 2015.

REPUBLIC.....PROSECUTOR

VERSUS.

DISMAS WAMALWA MULUNDA.....ACCUSED

JUDGMENT.

The accused Dismas Wamalwa Mulunda was charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code. **Particulars of offence are that;** On the 15th day of June, 2015 at Bukembe Location in Bungoma South District within Bungoma County grievously harmed PATRICK MUNENE NGUGI murdering him on the 19th day of July 2015 at Mediheal Hospital within Eldoret County.

The Prosecution called 4 witnesses. Pw1 No. xxxxxxxxxx APC Michael Kombe testified that 15.6.2015 he was on duty at Bukembe AP Post at 5p.m. when the accused ran to the AP Post and said he had found a man in company of his wife and he hit the man whom he did not know whether he was still alive. He removed a knife and handed it over to the witness. He said he needed protection. He detained him and informed his boss Steven Mitouse who called Nzoia Police Station where officers came and re-arrested the accused and took him to the Nzoia Police Station.

Pw4 Chief Inspector Patrick Bett who at time of incident was the officer In-charge Crime in Nzoia Police Station and who in company of P.C. Charles Kundu who has since retired investigated the case testified that accused was brought from Bukembe AP Camp as a suspect at of assault as Patrick Munene Ngugi. He was detained at the police station. On 16.6.2016 he visited the said Patrick at Lugulu Hospital where he had been admitted. He found he was in a coma. Patrick was later transferred to Mediheal Hospital Eldoret. He visited him and found he was in ICU but still in coma. Later he received information that Patrick had died. He the caused the accused to be charged with present offence.

Pw3 Phylis Washuka Munene the daughter of the deceased on 10.9.2015 she was present when a Post Mortem was done. She noticed he had injuries on the head. Pw2 David Chumba a Pathologist performed a Post Mortem on body of deceased. He found that he had bar holes and subdural hemorrhage. He formed opinion that cause of death was due to severe head injury caused by blunt object.

Upon being placed on his defence the accused elected to give sworn evidence and did not have any witness to call. He testified that on 14.6.2015 at 4 p.m. he was called by Pw1 an AP Officer who said he wanted to see him. He went there. The AP Officer informed him that a person had been assaulted at his home. He called his brother Patrick Sifuna who informed him a person had died at the home of James Kimalel. He was re-arrested and taken to Nzoia Police Station and later charged in Criminal No. 2517/2017 for doing grievous harm. Which he denied and was later charged with present offence.

In an offence of Murder the prosecution is under duty to prove beyond reasonable doubt the following 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 rheus.***
- 4) ***That it is the accused who inflicted the injury.***

In the case Pw1 APC Michael Kombe testified how accused went to Bukembe AP Post and told him he had assaulted a man he found in company of his wife. He handed to him a knife. Pw4 the Investigating officer testified how while at the Nzoia Police Station accused was

brought to the station on allegation of assaulting the deceased. He visited the deceased at both Lugulu and Mediheal Hospital but all the time he was in a coma and did not communicate. Pw3 Phylis Munene the daughter of deceased only identified the body to the doctor. Pw2 Dr. David Chumba performed a Post – Mortem and found cause of death was due to blunt trauma. These are the witnesses who testified for the prosecution.

The fact of death and cause of death was confirmed by Pw2 the doctor. There was no evidence led as to who caused the injury. No eye witness was called. The deceased who went into a coma did not disclose who inflicted the injuries. The prosecution only relied on the report the accused is alleged to have made to Pw1 a police officer. The Police did not follow it up with a statement under inquiry or a confession which would have been a basis the court would consider. In short the prosecution did not adduce any evidence as to who inflicted the injuries and the element of malice aforethought, important ingredients for the offence of Murder.

In the result, I find the prosecution has not proved the case against the accused for the offence of Murder beyond any reasonable doubt. I find accused not guilty of the offence of Murder contrary to section 203 as read with section 204 of the Penal Code and acquit him accordingly under Section 215 Criminal Procedure Act. Accused to be released unless otherwise lawfully detained.

Dated at Bungoma this 31st day of October, 2019.

S.N. RIECHI

JUDGE