



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CRIMINAL CASE NO. 26 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

LEONARD MAINA KOMU ACCUSED

JUDGMENT

1. **Leonard Maina Komu** is charged with an offence of murder contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars of the offence are that on the 11th day of June 2018, at **Malaba** Township in **Teso North** sub County of **Busia** County, he murdered **George Muroki**.
3. The prosecution case was that the deceased went and took chang'aa in the home of the mother of the accused. He was fatally beaten by the accused, his mother and some two other men.
4. **Leonard Maina Komu**, the accused, in his defence denied any involvement in the murder. He contended that he was in school at the time of the alleged incident.
5. The issues for determination are:
 - a) Whether the accused participated in the fatal beating of the deceased; and
 - b) Whether the offence of murder was proved against him.
6. The evidence that linked the accused to the offence was adduced by Regina Wambui Mbugua (PW1) who is the mother of the deceased. Her evidence is that when she went where the deceased was lying, she was with her daughter Grace Wanjiru. The deceased told her that he was beaten by Maina, Pamela and three other men before he went silent. In her evidence Grace Wanjiru Mbugua (PW2) gave a different version. She said that the deceased informed her and her mother that he was beaten by Leonardo Maina, Pamela and another person. In total, she testified that the deceased said he was beaten by three people.
7. Two issues emerge from the evidence of these two witnesses. One, the number of people the deceased allegedly said were involved in beating him. Were they five or three? The version of Regina Wambui Mbugua (PW1) gives the number as five while that of her daughter (PW2) gives the number as three. The second issue is whether the deceased mentioned Maina as testified to by PW1 or he mentioned Leonardo Maina as testified to by PW2. Can their evidence be relied on? I think not. These contradictions go to the core of their credibility. The Court of Appeal in the case of **Ndungu Kimanyi vs. Republic [1979] KLR 283**, (Madan, Miller And Potter JJA) held:

The witness in a criminal case upon whose evidence it is proposed to rely should not create an impression in the mind of the court that he is not a straightforward person, or raise a suspicion about his trustworthiness, or do (or say) something which indicates that he is a person of doubtful integrity, and therefore an unreliable witness which makes it unsafe to accept his evidence.

8. The evidence of Grace Wanjiru Mbugua (PW2) indicates she was with her mother while taking the deceased to hospital. When her sister Veronicah Wanjiku (PW3) alleges that she accompanied her (PW2) in taking the deceased to hospital one is left wondering whose evidence is to be believed.
9. Douglas Evans Namwinyi (PW4), is the brother in-law of the deceased. He testified that after he was alerted that the deceased had been beaten, he went to where he found him lying down. The deceased informed him that he had been beaten by Pamela and her children. No names of Pamela's children were given.

10. If we assume all the three versions attributed to the deceased were actually given by him, then we cannot give any weight as to whom he alleged beat him. The version by Douglas Evans Namwinyi (PW4) may suggest that this was a man in pain and was also drunk (as testified to by PW3)) and was therefore not lucid.

11. The accused testified that on the material day he was going home from school. At about 6 p.m. he met with one Ismael who advised him not to go home for there was a problem. He advised him to go to Bungoma and call his grandmother. He complied.

12. Lucy Wanjiru (DW2), confirmed that her grandson (the accused herein) arrived at her home on 11th June 2016 in school uniform and a bag.

13. The evidence by the accused and his grandmother (DW2) is a clear indication that corporal Mark Arao (PW5) conducted no investigations before he charged the accused. It would have been so easy to establish from the school when he left school on the material day. This would either exonerated or implicated him in the offence. He did not tell the court what became of the other people mentioned to have been involved in the fatal beating of the deceased.

14. From the foregoing analysis of the evidence on record, I find that the prosecution has failed to adduce evidence to show that the accused was involved in the fatal beating of the deceased. The offence of murder has not been proved against him. I accordingly acquit him of the offence and set him free unless if otherwise lawfully held.

DELIVERED and SIGNED at BUSIA this 18th day of December, 2019

KIARIE WAWERU KIARIE

JUDGE