



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NANYUKI

CRIMINAL CASE NO. 23 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

LAWRENCE GITHINJI MUREITHI.....ACCUSED

JUDGMENT

1. LAWRENCE GITHINJI MUREITHI hereinafter referred to as Lawrence, is charged with the offence of murder **Contrary to Section 203 as read with Section 204 of the Penal Code**. The particulars of the charge are that on 24th July, 2016 at Matunda village Laikipia Central Sub-County, Laikipia County Lawrence Murdered John Mureithi Ngahu, deceased. The deceased was the father of Lawrence.

2. The deceased was husband of Charity Wangari Mureithi (P W 1). Together they had 8 children. Lawrence, who was born in 1982, was the first born of those 8 children. Even though he was the first born he never progresses beyond nursery school in his education. The other children progressed normally through the education system.

3. Lawrence, according to his mother (P W 1) used to attend a special school. His mother informed the court that she decided to take him to a special school because Lawrence took too long to talk as a child. That he had problems with his eyes.

4. As a consequence of the difficulties he experienced when growing up Lawrence had not gotten married. He continued living with his parents, helping around the home with different chores.

5. On 23rd July 2016 the deceased inquired from Lawrence of the progress of the work he had given him; deceased had asked Lawrence to dig holes for fencing. According to his mother Lawrence had not carried out that task assigned to him by the deceased.

6. Again according to his mother, Lawrence did not answer the deceased when he inquired from him of the progress he had made, in task assigned to him. Lawrence walked away from the deceased to avoid giving an answer.

7. Anthony Muthee Mureithi (P W 2), A 19 year old son of the deceased and P W 1, was at their home on 24th July 2016. He recalled that on that day, early in the morning, he and the deceased washed the cows. When they finished washing them the deceased informed him that he was going to Lawrence's house, within their homestead, to go and inquire why Lawrence had not finish the tasks given to him of digging hole. P W 2 said that from where he was he was able to hear both the deceased and Lawrence quarrelling. This is what P W 2 said in evidence.

“I could tell that it was Githinji (Lawrence) and [the] deceased that were quarrelling.

After 5 minutes I heard deceased had gone quiet.”

8. Later P W 2 realised that the deceased was taking too long in Lawrence's house. A while later P W 2 decided to check whether deceased was still in Lawrence's house. This is what he stated in evidence:

“I went to Githinji's (Lawrence's) house – on reaching at Lawrence's house I found acacia tree – [the] thorns placed at the door-way of Lawrence's house. The thorns were on the path to the door way.”

9. On opening the door of Lawrence's house, whereby he had to use force because there were beddings impeding the opening of the door, P W 2 saw his father, the deceased, lying on the floor. His body was covered with beddings. P W 2 stated:

“Deceased I noticed he was bloody all over the face, blood was coming from his mouth.

10. The police were summoned and Lawrence was nowhere to be found.

11. A search team of young men was tasked by the chief to look for Lawrence. One of those who searched for him was Samuel Ngari Kariuki [P W 3].

12. At 4p.m. of the subject day the search team found Lawrence seated herding goats of a lady called Mama Mwita. When they took Lawrence back to his homestead. Lawrence showed everyone the hammer he used to strike the deceased. That hammer was produced as an exhibit and was identified by P W 1, P W 2 and P W 3 as the one Lawrence retrieved from his house.

13. The death of the deceased was confirmed, first at the scene by P W 2 and by senior sergeant Paul Simiyu. Death was also confirmed by Doctor Martin Kimani Kagia who performed the post-mortem. He performed it on 28th July, 2016. That examination revealed that the deceased suffered two cut wounds on the right parietal region, two cut wound on the right front parietal, one cut wound on the front aspect of the scalp. Deceased had clotted blood at the nose, right ear and mouth. The post-mortem exam revealed three depressed skull fractures and massive intracranial haemorrhage. The cause of death was massive intracranial haemorrhage, secondary to blunt trauma.

14. Lawrence in his unsworn defence stated that on the subject day he hit his father, the deceased, while he was defending himself from an attack by his father. This is what he stated:

“I did not intend to kill my father. I was trying to defend myself with a hammer- My father had a panga – I hit him my mistake.”

Lawrence further stated:

“My father had found me in my house. When he came he was asking: “why did you not finish the work I gave you.” I told him I was unwell... He started to make noise – he began to beat me with a panga. Finally he wanted to cut me with that panga. That is why I defended myself with that hammer. I did not wish to hit my father.”

15. In as far as that is the defence Lawrence offered, I say that I do not believe it. This is because no question was put to any of the prosecution’s witnesses of the presence of a panga where the body of the deceased was found. That defence is farfetched and is an afterthought. It is rejected. What however is pertinent to note is that Lawrence confirmed in his defence that he struck his father the deceased. And as the post-mortem report revealed the deceased had three fractures to the skull. Deceased body also had five cut wounds. Those injuries were not compatible with such as would be inflicted by one who was defending themselves. One who would be defending themselves would be expected to hit his opponent once or twice. Not any more than that.

16. Lawrence however seems to suffer from mental illness. This was first revealed by P W 3 who stated in evidence:

“Githinji (Lawrence) you cannot say he is normal.”

17. Further before Lawrence gave his defence his Learned Counsel stated that he was unable to get instructions from Lawrence. Accordingly Learned Counsel applied for Lawrence to be subjected to mental assessment.

18. That assessment was carried out at Nyeri Provincial General Hospital. The report in that regard is dated 13th June 2017. This is what was stated as the conclusion of the mental exam in that report

“Mental status: Abnormal mental status.

Fitness to plead: Not fit to plead till further assessment.

Recommendation: suspect to be assessed in presence of next of kin.”

19. When that report was presented to court the court made an order for Lawrence to be further examined at Mathari Mental hospital. This was done and the trial only proceeded when Mathari hospital gave a certificate that Lawrence had become capable of making his defence.

20. The prosecution has, in this court’s view, proved beyond reasonable doubt that Lawrence hit the deceased, severally on the head, which injuries caused his death. I have however found in examining the medical reports, and bearing in mind what P W 3 said about Lawrence, that Lawrence was suffering from disease which affected his mind and consequently he was incapable of understanding what he was doing when he severally hit his father on the head:

See **REPUBLIC - V - PHILEMON CHEMA [2014] eKLR.**

21. Consequently I hereby make a special finding that Lawrence is guilty of murder as charged but that he was insane when he committed that murder.

22. I hereby direct the Deputy Registrar of this court to report this case for the order of the H E the President in accordance with the

Provisions of Section 166 of the Criminal Procedure Code. In the mean while Lawrence Githinji Mureithi shall be kept in custody at Nanyuki G K Prison.

Dated and Delivered at Nanyuki this 17th April, 2018

MARY KASANGO

JUDGE

Coram

Before Justice Mary Kasango

Court Assistant: Njue

Accused: Lawrence Githinjimureithi

For accused.....

For state:

Language.....

COURT

Judgment delivered in open court

MARY KASANGO

JUDGE