



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HIGH COURT CRIMINAL DIVISION

HIGH COURT CRIMINAL CASE NO. 12 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

CHRISTOPHER NJOROGE MUMBI.....ACCUSED

JUDGMENT

1. **Christopher Njoroge Mumbi** the accused herein is facing two counts of Murder Contrary to Section 203 as read with Section 204 of the Penal Code. They state as follows;

Count 1 (C1): Murder contrary to section 203 as read with Section 204 of the Penal Code Cap 63 Laws of Kenya.

The particulars being that the accused on the night of 10th and 11th January, 2012 at Kamiti Maximum Prison in Nairobi within Nairobi County murdered **Ibrahim Aden**.

Count 2 (C2): Murder contrary to Section 203 as read with Section 204 of the Penal Code Cap 63 Laws of Kenya.

The particulars being that the accused on the night of 10th and 11th January, 2012 at Kamiti Maximum Prison in Nairobi within Nairobi County murdered **Julius Kimani**.

2. The accused denied the charges and a plea of not guilty was entered. The prosecution called 13 witnesses in support of its case.

A summary of the prosecution case is that the accused is a convict in a case of robbery with violence and is serving sentence at Kamiti Maximum Prison, Nairobi. On the night of 10th and 11th January, 2012 he was admitted at the said Prison's sick bay Ward No. 4 together with other prisoners including **PW10 John Kinyua Njiru** and the two deceased persons.

3. It was PW10's evidence that he heard screams from the inmates in the said ward who were fighting. PW10 had been admitted with paralysis in his legs and whole body except the head. That the accused beat and hit Kimani and a Somali prisoner who both died. The witness said, he only escaped through the help of one Saidi who lifted him and threw him under the bed from where he could not see much. He had earlier seen the accused assault both deceased persons.

4. He stated that the accused had cut the Somali victim with a piece of wood which had nails at the end of it. He did this after hitting Kimani. He identified the pieces of wood used by the accused to injure the two deceased (**Exhibit 1**). They were rescued by the many prison guards who came to the facility.

5. **PW3 Abdi Noor Bare Bilha** and **PW4 Stanley Muriuki Muthama** who are relatives of the deceased in C1 and C2 respectively, identified the bodies for post mortem. **PW5 No. 89002487 David Wilson Ndungu**, **PW6 Joseph Munyao Ndichu**, **PW7 Sgt. Francis Mwai Mburu**, **PW8 No. 17622 CI Timothy Njane**, **PW9 No. 30326 PC Gibson Kimosop** and **PW11 PC Tiberio Muturi Ita** were all working at Kamiti Maximum Prison in various capacities at the time of incident. PW5 was the acting in-charge and he received a call from one of the officers on duty, on the night of 10th, 11th January, 2012.

6. He rushed to the prison sickbay at Ward 4 and met the nurse on duty and other prison officers. He found injured inmates and one who had already passed on called Ibrahim Aden. Inside the ward, he found three pieces of a crutch and broken pieces of a chair (**Exhibit 1 and 2**). He reported the matter at Kiamumbi police station. Shortly thereafter, he learnt of the death of Julius Kimani.

7. PW6 is an enrolled community nurse by profession. On this night, he was called to the prison hospital over an emergency. He rushed

there and found two inmates; Julius Kimani had a deep cut on the cheek and was bleeding while Aden Ibrahim was already dead. He later learnt that Julius also died.

8. He confirmed that besides the deceased, there were 4 – 5 inmates who had injuries. He too, saw pieces of a wooden broken chair on the floor. He said, he was aware that Julius Kimani was suffering from cancer of the throat. At the time he arrived at the facility, he found the accused handcuffed and being guarded near the door.

9. **PW7 Sgt. Francis Mwai Mburu** was on duty at the prison that night. At around 1.40 am, he heard screams from the patients at the sick bay. He rushed there together with PC Bernard Gidirikir. He found the accused who was armed with a piece of metal and was hitting others with it. With the help of the inmates, they managed to subdue and handcuff him.

10. PW8 was the night duty officer that night. He too heard screams from the sick bay and rushed there with PW7. Peeping through the ventilation, he saw the accused beating other inmates and shouting at them to say “*Halleluiah*”. He was using a metallic clutch to assault the others. Julius Kimani was bleeding from the mouth and nose, while Aden Ibrahim was confirmed dead. Julius later succumbed to the injuries.

11. PW9 was at the sentry entry from 1.00 am. Later, he heard unusual noise of murmurs, shouting and loud talk. He could only hear the word “*Halleluiah*”. The noise increased and he could hear wood hitting the floor and some inmates shouting for help. He raised an alarm and some officers came. Upon opening the door, he saw the accused holding a piece of wood and metal and was violent. He was later subdued and handcuffed.

12. PW11 was on duty at the inner gate of the prison on this night. He heard noises at the sick bay block. After alerting Sgt. Nyakwaga, he saw PW7 come from inside the prison looking for reinforcement. They entered the sick bay with other officers and found one prisoner who had turned violent and was hitting others. He identified the prisoner as the accused. They tried to stop him from assaulting others but he refused to drop the piece of wood he had.

13. The witness stated that at the time all this was happening, one prisoner was already dead. Julius Kimani whom he took to hospital was pronounced dead on arrival. The officers identified the pieces of wood the accused had used to assault others as Exhibit 1.

14. **PW12 Dr. Ndegwa** conducted the post mortem on the bodies of the deceased in both counts. He found the cause of death in respect of the deceased in the 1st Count to be, head injury due to blunt forced trauma (**Exhibit 4**). He also found the cause of death in respect of the deceased in the 2nd count to be head injury due to blunt forced trauma (**Exhibit 3**). Each of the deceased had bleeding in the brain.

15. **PW13 No. 52772 Sgt. Dalmas Muthoga** was the investigating officer. He took up the case upon being briefed by the D.C.I.O. on 11th January, 2012. Accompanied by other officers who included C.I. Daniel Muratia and O.C.S. Kiamumbi, they went to Kamiti Maximum Prison where they were shown the body of Aden Ibrahim at the sick bay. Upon interrogating the accused’s inmates, they were satisfied that it was the accused who had beaten the deceased using a broken armchair and a walking crutch. This witness produced broken armchair pieces (**Exhibit 3 (i) – (iii)**) and broken walking crutch pieces (**Exhibit 4 (i) – (iii)**).

16. He said, when they arrived at the facility, they found the accused in handcuffs outside the sickbay. The witness drew a sketch plan (**Exhibit 5**) and the accused was arrested. The other injured person, Julius Kimani also died. He had the bodies taken for post mortem.

17. **PW1 Dr. Kamau** testified that on 26th January, 2012 the accused was brought to him for examination. He was under arrest and was tied on a stretcher, as he was violent. Upon examination, PW1 formed the opinion that the accused could not be medically examined. He therefore sent him for psychiatric evaluation before the medical examination could be done.

18. **PW2 Dr. Mucheru Wangombe** a psychiatrist examined the accused twice. The first was on 30th January, 2012. In summary, he established that the accused could not remember the details of the crime. He had been abusing drugs and cannabis, valirem and benzehozol which is also addictive. He had also abused chang’aa for ten (10) years. The accused continued with the medication as they managed him for induced psychosis. The accused is a robbery with violence convict.

19. When he next examined him on 4th July, 2013, the accused maintained eye-contact rapport and had normal speech in pitch tone and pace. He had no hallucinations, no thought disturbances and was well oriented in time, place and vision.

This was his conclusion;

(i) He had substance abuse effects but was mentally stable.

(ii) Accused was fit to stand trial, though he could not still recall how the incident occurred.

The report was produced as **Exhibit 2**.

20. The accused in his defence made an unsworn statement. He stated that on the night in question, he was at the sickbay having been admitted there that night, as he had cerebral malaria. He did not understand himself, he said.

21. When he regained consciousness, he was informed by the prison warders and his inmates that he had killed two people. That he only regained consciousness after being confined for six (6) months.

22. Both the State and defence made no submissions.

DETERMINATION

23. The accused is facing a case of Murder contrary to Section 203 as read with Section 204 of the Penal Code. Section 203 of the Penal Code defines murder as;

“Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder”

24. For a charge of Murder to be proved, the following ingredients must be established;

- (i) The fact of death;
- (ii) The act of killing (*actus reus*); and
- (iii) The intention to kill (*mens rea*).

The Fact of Death

25. The evidence of PW3 – PW13 confirm that Aden Ibrahim and Julius Kimani (the deceased in Counts 1 and 2) died. PW12 who conducted the post mortem on the two bodies enumerated in the post mortem reports (***Exhibit 3 and 4***) the nature of injuries suffered by both deceased. He also gave the cause of death as head injury due to blunt forced trauma. I am therefore satisfied that the fact of death was established. It was not a natural death.

The Act of Killing (actus reus)

26. The issue to be established here is whether it is the accused who killed the two deceased persons.

It has been shown that the scene of incident was at the sickbay Ward 4 of Kamiti Maximum Prison. The accused is a convict of robbery with violence and is a prisoner at the said facility.

27. PW10 is also a prisoner at the said facility testified that on the material night, he, the accused and others were housed at the sickbay Ward 4 as they were unwell. Some of the prison officers who responded to the screams and cries for help from the sickbay Ward 4 were PW5 – PW9 and PW11. They found the accused in the said ward.

28. The accused himself in his statement of defence has confirmed that on the night in issue, he had been admitted at the said facility suffering from cerebral malaria. All the evidence places the accused person at the scene of crime.

29. PW10 testified that the accused is the one who beat up the two deceased persons using a piece of wood which had nails on them (Exhibit 3 (i) – (xv)). PW7 responded to screams from prisoners in the sickbay. He said, he found the accused holding a piece of metal with both hands and he was using it to hit other inmates.

30. PW8 who rushed to the scene with PW7 said, when they reached the sickbay, he peeped through the ventilation and saw the accused beating others with a metallic crutch and shouting at them to say “*Halleluiah*”. Among those beaten by the accused were the deceased persons in C1 and C2 of the charge of Murder. PW9 also confirmed that when the door to Ward 4 was opened, they found the accused holding a piece of wood and metal. Aden Ibrahim was already dead and Julius Kimani had injuries.

31. It was PW11’s evidence that when they gained entry into the sick bay, they found the accused person armed with two pieces of wood and he was violent and even wanted to hit them. The accused was finally subdued and overpowered by the inmates and the prison officers and he was handcuffed.

32. The evidence of the witnesses is that the accused was very violent and he had made a number of the inmates to run for their dear lives and were hiding under the beds. As at the time of rescue, Aden Ibrahim was already dead while others including Julius Kimani were injured. Julius later succumbed to the injuries.

33. The accused in his defence said, he was sick and became unconscious due to the cerebral malaria he was suffering from. That it was after 6 months when he regained consciousness that he was told by the other inmates that he had killed two people. He had no knowledge of this and he did not know what had happened.

34. The evidence of the prosecution witnesses on what they witnessed in the sickbay Ward 4 on this night is consistent. There was only one person in that ward who was violent and was hitting the others. He was armed with pieces of wood and a metal crutch which he used to assault them. Pieces of wood and metal were produced as Exhibit 3 (i) – (xv) and Exhibit 4 (i) – (iii) respectively.

35. All that the accused has said in his defence is that he was sick and unconscious and so does not know what transpired. From the evidence adduced, I am satisfied that the accused has been placed at the scene of incident. He has also been positively identified as the person who violently attacked his inmates and caused Aden Ibrahim and Julius Kimani fatal injuries.

36. Having found that it is the accused who beat up the two deceased persons causing them fatal injuries, I now move to determine whether the evidence adduced proves the presence of malice aforethought as required in a charge of murder.

37. Malice aforethought is defined in Section 206 of the Penal Code as follows;

“(a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;

(b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;

(c) an intent to commit a felony;

(d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.”

38. This incident occurred in Ward 4 of the sickbay at Kamiti Maximum Prison, during the night of 10th and 11th January, 2012. The inmates who were in this ward were sick. PW10 said he was suffering from paralysis of parts of his body while the accused said he had cerebral malaria. The prison nurse testified that Julius Kimani, the deceased was suffering from cancer of the throat. He did not however know what Aden Ibrahim (deceased) and the accused were suffering from. Apparently, there was nobody who seemed to know what the accused was ailing from except the accused himself.

39. It was the evidence of PW7 - PW9 and PW10 that the accused was violent when hitting the other inmates. He refused to heed their calls asking him to stop. A number of the inmates had taken refuge under their beds. It took the combined efforts of some of the inmates and prison warders to subdue the accused and handcuff him. This confirms that he was violent.

40. The accused in his defence said, he had been admitted into the facility suffering from cerebral malaria. That he became unconscious and remained in the same state for 6 months. It was after he regained consciousness that his inmates and prison warders told him that he had killed two people. During the period he had cerebral malaria, he did not even understand himself, he said.

41. The prosecution did not adduce any evidence to show what the accused was suffering from when he was admitted at the sickbay Ward 4. Even the nurse (PW6) had no clue as to what the accused was suffering from.

42. **PW1 Dr. Kamau** testified that on 26th January, 2012 the accused was taken to him from Kasarani police station for assessment of his age, medical and mental status. He was violent and had been tied to a stretcher. The doctor examined him but was of the opinion that he could not be medically examined and so sent him for a psychiatric evaluation (Exhibit 1). There must have been something that he noticed on the accused that required the attention of a psychiatrist. This was roughly fifteen (15) days after the incident in issue.

43. **PW2 Dr. Mucheru Wang’ombe** is a psychiatrist practicing at Mathare Hospital. He examined the accused on two occasions. The first one was on 6th June 2012. He forwarded a report of even date to the court when in his opinion he states *“The accused suffers from substances induced psychosis”*. He also noted that the accused had been on antipsychotics and mood stabilizers since January, 2012. He however found him fit to stand trial.

44. The second time he examined him, was on 4th July 2013 and this was a review where his opinion was as follows;

“The accused suffers from substance induced psychosis currently in remission. He is mentally stable on medication.

He is FIT to take a plea.” (Emphasis is mine)

45. The record also shows that despite the fact that the offence was committed on the night of 10th and 11th January, 2012, the accused was first arraigned in court on 16th May, 2012. On this date, the court gave directions that the consultant psychiatrist Mathare Mental Hospital avails a comprehensive report about the mental status of the accused. The plea was therefore taken on 14th June, 2012 after the psychiatrist reported that the accused was fit to stand trial.

46. Taking the totality of this evidence together, the following come out clearly;

- The accused was violent on the night in question.

- A week later on 16th January, 2012 (though PW2 talks of 26th January, 2012 in his evidence) the accused was still violent and was tied to a stretcher.

- It was only five (5) months later that he was certified fit to stand trial.

- **PW2 Dr. Mucheru Wang’ombe** who did the certification was categorical that the accused had been abusing prescription drugs and was suffering from substance induced psychosis.

- He had been on antipsychotics and mood stabilizers since January, 2012. It is however not clear exactly when in January, 2012 he had been placed on this treatment.

- Finally, the accused was **mentally stable on medication** (emphasis mine).

47. The above undisputed facts paint a picture of a man who was kept mentally stable on medication even though he did not have any history of a mental breakdown. It is clear that he was abusing drugs and this had had an impact on him. He had to be handcuffed after the incident of violence.

On 14th June, 2012 **Ombija J.** (as he then was) ordered after taking plea, that the accused should be remanded at Kamiti Maximum Security Prison in an **isolated cell** (emphasis mine).

48. This shows that even those not in the medical field could see that not all was well with the accused's mental status. It further explains why it took almost six (6) months after the incident before the accused was arraigned in court for plea taking. He was actually receiving treatment. The accused himself stated that he had cerebral malaria and that was the reason for his admission in Ward 4 of the sickbay at Kamiti Maximum Prison.

49. The prosecution failed to produce before this court the record of the treatment offered to the accused when he was admitted in the said Ward 4. It is also unknown when he was admitted there and for how long he had been in the said facility before the bizzare happening. Besides the accused's word, there is no record to show what the accused was suffering from when he was admitted. In other words, there is no evidence to rebut the accused's assertion that he had been admitted while suffering from cerebral malaria.

50. His action of beating up inmates and forcing them to shout "*Halleluiah*" (as attested to by PW8) was not a normal occurrence. This was confirmed by **PW9 No. 30326 PC Gibson Kimosop** who testified at page 33 saying;

"I heard unusual noise – murmurs, shouting, talking loudly and I could only hear the word halleluiah."

51. This is compounded by the fact that the accused hit his victims indiscriminately and totally refused to drop his weapons (Exhibit 3) even when confronted by the prison warders who must have been armed.

My finding is that there is a high possibility that at the time of the commission of these offences, the accused was not of sound mind.

52. The totality of the evidence and the reports by PW1 and PW2 (Exhibit 1 and 2) attest to that. I further find that this is a case falling for determination under Section 166 of the Criminal Procedure Code which provides;

"(1) Where an act or omission is charged against a person as an offence, and it is given in evidence on the trial of that person for that offence that he was insane so as not to be responsible for his acts or omissions at the time when the act was done or the omission made, then if it appears to the court before which the person is tried that he did the act or made the omission charged but was insane at the time he did or made it, the court shall make a special finding to the effect that the accused was guilty of the act or omission charged but was insane when he did the act or made the omission.

53. I therefore make a special finding to the effect that the accused is guilty of the offence of murder as charged in both counts but was insane when he committed the offences. I further direct that the accused be detained at the pleasure of the President pursuant to Section 166 (2) Criminal Procedure Code.

54. He shall meanwhile be kept at the Kamiti Maximum Prison.

Orders accordingly.

Dated, signed and delivered in open court at **Nairobi** this day **22nd** of **May**, 2018.

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HEDWIG I. ONG'UDI

HIGH COURT JUDGE