



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 18 OF 2014

REPUBLIC PROSECUTOR

VERSUS

JACOB LAIRAN MUGAMBI ACCUSED

J U D G M E N T

1. The Accused **JACOB LAIRAN MUGAMBI** (“the accused”) has been charged with the offence of murder contrary to **Section 203 as read with Section 204 of the Penal Code CAP 63 of the Laws of Kenya**. The particulars of the offence being that on the night of 16th March, 2014 at Muili sub-location, Nchooro location in Tigania West District within Meru County, jointly with another not before court, the accused murdered **SIMEON LIMIRI MICHUKI** (“the deceased”). He pleaded not guilty to the charge and the prosecution called eight witnesses to establish its case.

2. **PW1 Eustace Mureithi** testified that the deceased was his uncle. That on 16th March, 2014 at about 9.30 pm he was going home from Muili market in the company of the deceased, when at the junction of Jiakauto, the accused emerged from a thicket while armed with a knife and a stone and hit the deceased with the stone. The deceased fell down on a ditch beside the road.

3. **PW1** screamed for help while the accused chased him but did not catch up with him. When **PW1** reached home, he informed his grandmother (**PW2**) and **Paul Mwitai** what had happened. The two accompanied him back to the scene but met **Kinyua (PW4)** walking home while assisting the deceased to walk. The deceased was bleeding profusely from his head and his right side of the face. He was taken to hospital at about 10.30 pm. That night, there was a bright moonlight and a full moon. The witness had known the accused ever since he was a child as they were neighbours.

4. **PW2 Maria Nkirote**, a grandmother to **PW1** and mother of the deceased testified that on the material night, she was at home with her daughter **Lucy Mwakia**. At about 10 pm, **PW1** came running and informed them that the deceased had been killed by the accused. She asked her brother in law, one **Paul Mwitari (PW5)** to accompany her to the scene. On their way there, they met **Kinyua (PW4)** and the deceased coming home.

5. **PW3 Patrick Muchui Mitu** told the court that on the material day he was called by Lucia, his auntie, and informed of what had happened. He got on his motor cycle and headed to Lucia’s home. He found the deceased lying on a bed in his bedroom. While accompanied by, **PW4** he took the deceased to the police station where they were given P3 form and then proceeded to Tigania hospital for treatment.

6. **PW4 Julius Kinyua** testified that on the material date at about 9pm while going home from Muili market, he found the deceased lying on a ditch bleeding from injuries on the head and on the right cheek. He was able to see the injuries because he had a small torch. Since he knew the deceased, he supported him and both walked home together. They were met on the way by **PW1, PW2** and **Paul Mureithi**. He accompanied others who took the deceased to hospital that night after reporting the incident at the police station.

7. **PW5 Paul Mwitari** testified that on the material day at about 9.30 pm he was in his house when **PW2** came with **PW1** screaming. After learning what had happened, he accompanied them to the scene. **PW1** told him that the deceased had been assaulted by the accused. On the way, they met **PW4** with the deceased who was bleeding from the head and the right cheek. They helped him home. A motorcyclist was called to take the deceased to hospital. At the time, the deceased could not talk as he was in bad shape. The following day, he received information that the deceased had died.

8. **PW6 George Mburugu** told the court that on the material day at about 3 pm he was chewing miraa and taking beer with others at Muiri market. The deceased was with him but did not take any alcohol. He did not know how the deceased left for home. The following day he learnt that the deceased had died.

9. **PW7 No. 233680 IP Clement Kurgat** testified that in 2014 he was attached to Tigania Police Station. On 17th March, 2017 at about 1 pm he received a report that **Simon Rimiri Michuki who** had been attacked the previous night had died at Tigania Mission Hospital while undergoing treatment. He booked the report and took one officer and proceeded to the scene of the crime. At the scene, there were cattle

and human foot prints. There was nothing peculiar with the scene as it had been interfered with.

10. He established from witnesses that the deceased was in the company of **PW1** when the incident happened. When the attacker was reported by the relatives, the villagers arrested him and took him to Muili AP camp which was nearer than the police station. He re-arrested him on 17th March, 2014. He went to Tigania Mission Hospital and inspected the body. It had bruises on the face and a deep stab wound at the back of the head (above the neck). He established that the deceased and the accused had had an argument on 16th March, 2014 but he did not establish the basis or nature of the argument.

11. **PW8 Susan Njambi Muchiri** a clinical officer at St. John of God Tigania, produced the post mortem report which was conducted by Dr. Muriungi. The body had a bruise on the chin, a stab wound on the lower lip and another one on the left supra-clavicular region. There was a linear skull fracture on the left temporal bone and a large hematoma above the menengis. The pathologist concluded that the cause of death was cardio pulmonary arrest secondary to internal bleeding of the brain.

12. When put on his defence, the accused gave sworn testimony and called one witness. He testified that on 16th March, 2014 he was in his house when 8 people from the same family came at about 10 am with 2 Administration Police and 2 regular police officers and arrested him. They told him that he had committed an offence the previous night. They carried out a search in his house but did not find anything. They took him to the home of Mwirigi who had fought with the deceased and they recovered a knife, a blood stained shirt and one blood stained shoe. Mwirigi disappeared after he heard that the deceased had passed on. That the eye witnesses had refused to testify against him.

13. **DW2 Judy Mukiri** the wife of the accused testified that on the material day, the accused did not leave his home after 5 pm. That the following day, she learnt that her husband had been arrested when she was away in the farm.

14. I have carefully considered the evidence on record. The accused is facing a charge of murder. **Section 203 of the Penal Code** defines that offence as follows:-

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

15. From the above definition, in order to prove the offence of murder, three things must be established. These are; the proof of the fact and the cause of death of the deceased, the proof that the death of the deceased was the direct consequence of an unlawful act or omission on the part of the accused and finally proof that the said unlawful act or omission was committed with malice afterthought.

16. The law places the obligation on the prosecution to prove each ingredient of the offence beyond reasonable doubt. See **Okethi Okale and Others v Republic [1965] EA 555.**

17. On the first issue of proof of the fact and the cause of death, the evidence of **PW1, PW3, PW4** and **PW5** was to the effect that, the deceased was attacked and hit on the head on the night of 16th March, 2014. He was rushed to Tigania Mission Hospital for treatment after reporting the incident at Tigania Police Station. The following day the deceased passed on while undergoing treatment.

18. According to the post mortem report that was produced by **PW8** as **PExh.1**, the body of the deceased had a bruise on the chin, bruise on the left intra orbital region, stab wound on the lower lip on the left corner measuring approximately 0.5 by 1 by 2 cm and a stab wound on the left supra clavicular region measuring 5cm long by 0.1cm wide by 5cm deep. The doctor concluded that the cause of death was cardio pulmonary arrest epidural hematoma from laceration of posterior branch of middle meningeal artery. Accordingly, I am satisfied that the prosecution established the first issue of the fact and cause of death.

19. The second issue is whether the death of the deceased was as a direct consequence of an unlawful act of the accused. **PW1** told the court that on the material day, he was with the deceased walking home when the accused emerged from a thicket and hit the deceased on the back with a stone which made the deceased fall to the ground. That the accused had a stone and a knife at the time of the attack. That after hitting the deceased, the accused chased **PW1** but gave up along the way. **PW1** ran home and informed **PW2** and **PW5** about what had happened.

20. **PW4** told the court that he found the deceased lying in a ditch bleeding from his head. He assisted him by taking him home and met **PW2, PW3** and **PW5** on the way. They took the deceased home and later to hospital. **PW7** told the court that when he searched the accused's home he did not find anything that would connect the accused to the crime. That when he visited the scene there was nothing peculiar for it had been interfered with. The murder weapon was never recovered. **PW8** produced the post-mortem report (**PExh.1**) which showed some of the injuries as being a large hematoma on the left temporal region above the menengis and evidence of left brain compression.

21. In his defence, the accused stated that on the material day he was in his home. That he was arrested the following morning by 8 people of the same family who came with four police officers. That when his house was searched, nothing was recovered. That the party then proceeded to the house of one **Mwirigi** from where a knife and blood stained shirt was recovered. That the said **Mwirigi** had fought with the deceased the previous day. That the eye witnesses refused to record statements except the members of the deceased's family. On her part **Judy Mukiri (DW2)**, the wife of the accused told the court that on the material day, the accused never left his house after 5pm.

22. **PW1** was firm in his testimony that he saw the accused assaulting the deceased on the material date. That there was full moon and he could identify the accused. He placed the accused at the scene. He told the court that the accused was at the time armed with a stone and a knife. The Postmortem report corroborated the testimony of **PW1** in that, one of the injuries found on the body of the deceased was the head injuries at the rear. **PW1** remained firm that the accused had both a stone and a knife.

23. The accused defence was that he was not at the scene as he never left his home after 5pm on the material day. That it was someone by the

name **Mwirigi** who had fought with the deceased and from whose house incriminating evidence (knife and bloodstained shirt) were recovered. These issues were never put to the prosecution witnesses when they testified. **PW7** who investigated the case was not questioned on the fact of a 3rd person being involved in the offence. The accused never explained when and where the alleged **Mwirigi** fought with the deceased. The accused spoke of eye witnesses to the fight between the deceased and **Mwirigi**. He did not disclose who these people were. To my mind, the defence was an afterthought.

24. I am alive to the fact that it is not for the accused to prove his innocence. However, an accused has an explanation to a set of facts as presented by the prosecution witnesses, that explanation should be put to the prosecution witnesses when they are testifying to give them an opportunity to either deny or confirm. In this case, the existence of **Mwirigi**, the alleged recovery of the murder weapon from **Mwirigi's** house and the fact of the arrest being effected by the deceased's members alone should have been put to those who testified to test the veracity of what they told the court. This did not happen and it is therefore difficult to gauge the authenticity and veracity of these allegations.

25. In this regard, I am satisfied **PW 1** testimony that remained firm and as corroborated by the medical evidence proved that it is the accused's wrongful act that caused the death of the deceased.

26. Before departing on this issue, there is the issue of the particulars of the charge and the evidence tendered. The charge read that the accused with another before court murdered the deceased. However, throughout the prosecution case, there was no mention of any other individual having been involved in the act. This may be a case of the evidence failing to support the charge. However, I do not think that the accused was prejudiced in any way by this fact. The prosecution case remained firm that it is he who caused the death of the deceased.

27. The final issue is whether there was any malice aforethought. **Section 206 of the Penal Code** provides that:-

“Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances—

(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)

(d)

18. The post-mortem report that was produced set out in detail the injuries that were inflicted on the deceased. There was a bruise on the chin, a stab wound on the lower lip and another one on the left supra-clavicular region. There was a linear skull fracture on the left temporal bone. There was a large hematoma on the left temporal region above the menengis. These were serious injuries and in inflicting them on the deceased, the accused must have intended to cause him grievous harm.

19. Accordingly, I am satisfied that the prosecution has been able to prove its case beyond any reasonable doubt that the accused with malice aforethought caused the death of the deceased.

20. I find the accused guilty of the offence of the murder of **Simeon Limiri Michuki** and convict him of the offence of murder contrary to **Section 203 as read with Section 204 of the Penal Code CAP 63 Laws of Kenya.**

DATED and DELIVERED at Meru this 27th day of June, 2018.

A. MABEYA

JUDGE