



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 34 OF 2011

REPUBLIC.....PROSECUTION

VS

JOSEPH MUTABARI KALIONJI.....ACCUSED

JUDGMENT

The accused Joseph Mutabari Kalionji was charged with the offence of murder contrary to section 203 as read with section 204 of the penal code. Particulars are that Joseph Mutabari Kalionji on the 24th day of May 2011 at Nchiiru village within Muthara Location in Tigania East sub county murdered Peter Kithinji Kailemia.

According to Dr Njuguna who conducted post-mortem which was produced by Dr Erick Kiremi the deceased persons right upper lobe of the lung was punctured resulting in massive haemorrhage in respiratory system. PW1 said air and blood entered the lung and the deceased could not breath. The injury was secondary to penetrating chest injury.

PW2 testified that while on the way home he met the deceased carrying chicken which he identified as his and when he inquired he said Mutabari who was following the deceased had sold chicken to him. PW 2 said he took the chicken and left accused and deceased quarrelling. That he saw Mutabari produce something from the pocket and stabbed the deceased. He said he was 6 metres when accused stabbed the deceased. PW2 identified clothes worn by deceased at the time he was stabbed and they had blood stains and it had a hole on area where the deceased was stabbed and it was heavily stained with blood.

That when the accused stabbed the deceased PW2 jumped and got hold of him to prevent him from stabbing the deceased again. That when PW2 held accused the deceased Peter ran off. PW2 followed and found he had fallen about 20 metres away from where he was stabbed. That he called his brother Peter Odero to the scene. PW2 said his brother the accused stabbed the deceased who died at Tigania Mission Hospital while undergoing treatment. PW2 said when he took his chicken from the deceased he left the deceased quarrelling with accused why he had sold to him stolen chicken. He said he was 6 metres away when he saw the accused stab Peter the deceased. He said he didn't injure Peter in the process of asking for his chicken. He said peter gave him the chicken willingly.

PW3 Peter Ondero said on 24.5.2011 he was at Muiriri at 4.00 pm when he received a phone call from his brother PW4 informing him Mutabari had stabbed somebody. That he proceeded home on a motorbike but found the victim could not sit on motorbike. He had been stabbed on the chest. He went to get a vehicle from Muchiri and he reported offence to Assistant Chief. PW3 used taxi to take deceased to hospital Tigania District Hospital but doctor pronounced him dead. That accused was taken to hospital by the chief and police. PW3 said this was second death the accused was involved in as he had been jailed for offence of manslaughter.

PW4 Assistant chief of Kitharene Sublocation in Tigania got report from PW3 about the assault committed by accused herein. He advised the victim to be taken to hospital and reported to the chief. In company of chief, 3 Administration police officers and Muriuki and 2 others they went to arrest accused whom they found at home. A kitchen knife was recovered tucked on his waist. He said on arrest they escorted accused to hospitals where they found deceased had died and they observed a stab wound on right upper chest. The body was taken to Meru Level 5 Hospital mortuary.

PW5 father to the deceased was called to hospital where his son was confirmed dead before being treated and he paid the bill before body could be taken to the mortuary. PW6 the Investigations Officer herein testified that he received report from Assistant Chief of Kathirene sub location Charles Mukiria that accused had stabbed and killed the deceased. That in company of P.C. Okoth and P.C Mutai they went to scene at the home of accused person. That at the home they found 2 dead chicken tied with a piece of cloth. That there were some blood stains in the home and on the path out of the home. They proceeded to hospital where victim had been taken and took body to Meru Hospital Mortuary. He took custody of the deceased person's shirt which had blood stains and a hole pierced on right side of chest. Accused was arrested and taken to station by chief and Administration police who also recovered a knife suspected to have been used to commit the offence.

Knife – EX P2

The blood on knife was examined against blood sample from deceased Ex P C & D and from accused Ex D.

Exhibit memo form – Ex P4.

Report from Government Chemist – Ex P 5

When accused was placed on defence he gave sworn statement and confirmed that PW1 got someone carrying 2 chicken which that person said had been sold by him. That PW2 took the chicken back home.

That as PW2 returned the chicken back home he remained with the person whom he asked why he said he had sold the chicken and he asked what about the one he still had. That they argued for about 10 minutes. That the person said it is not chicken he wanted but the accused. That he wriggled the neck of the 2 chicken he had remained with and threw them inside. That accused got upset by what the deceased did. That the deceased held him by his shoulders and in return accused held collar and they started fighting. He said they fought for 15 minutes in his compound and fell over the kitchen door. That the kitchen door was open and they entered. That there was knife on the table which the deceased reached for and they started struggling over the knife. That when trying to snatch knife from deceased it stabbed him and he ran out of the compound. Accused said that the deceased was not known to him. He said his grandmother witnessed what happened. Accused said he never planned to stab the deceased.

Although accused had been placed on defence and had testified when this court took over proceedings which had earlier been taken by Lady Justice Wendoh the defence applied for re-opening and recall of PW1 and PW2 for cross examination. This was allowed as counsel came on record after they had testified. The cross examination was more less the same as what is already on record. It is only PW2 who was recalled.

Both the prosecution and defence filed submissions and in consideration of the evidence on record and submissions this court is to determine whether the prosecution has proved beyond all reasonable doubt that:-

- The accused caused the death of Peter Kithinji Kailemia
- That the accused caused the death due to malice aforethought.

When this unfortunate incident occurred the accused persons brother PW2 whose chicken had allegedly been stolen was at the scene. Accused admits PW2 left him quarrelling with the deceased. Why he said that he is the one who sold the chicken and they fought. PW2 however said he saw accused produce a knife and stab the deceased. That when he saw that he held accused not to stab deceased again. He said this happened along the pathway and the deceased ran away but fell down some distance from 1st scene. That PW2 arranged to take him to hospital by calling his other brother namely Ondero but on arrival at the hospital the deceased was pronounced dead. The claim by the accused that they fought within his compound and that deceased wringed the necks of 2 other chicken and threw in his compound is not true. These allegations were not put to PW2 who was at scene. PW2 didn't say the deceased remained with any other chicken. PW2 and PW3 who tried to help the deceased were brothers to the accused and they said that they had no grudge with accused although he was problematic and had even caused PW2 to shift and rent a house at the market centre. Accused person pleaded provocation but there is no way that PW2 his brother could have failed to confirm that the deceased provoked the accused.

I do find the evidence by the prosecution points to the fact that accused caused the death of the deceased by stabbing him. He is found guilty as charged and is convicted under S.215 C.P.C

HON. A.ONG'INJO

JUDGE

JUDGMENT SIGNED, DELIVERED AND DATED THIS 27TH DAY OF JUNE 2018.

IN THE PRESENCE OF:

C/A:-Penina

Prosecution:- Mr Kinyua for state

Accused:- Mrs Ntarangwi Advocate for accused.

HON. A.ONG'INJO

JUDGE

Mr Kinyua for Kinyua

No previous records.

Mrs Ntarangwi Advocate in Mitigation

Accused is 34 years old. He has 3 years aged between 8-10 years. He has been in custody for 7 years. We pray that court takes the period into account, accused is remorseful and prays for mercy.

This was a very unfortunate incident and he is not taking it lightly that somebody passed on he has suffered for the time he has been in custody.

Order.

Accused persons mitigation is considered. However, after he sold 2 chicken that didn't belong to him to the deceased he should have refunded his money and apologised for putting him into disrepute. Instead he retained the money and killed him. In his defence he even says he didn't know him when PW2 confirmed the deceased used to work in a hotel in their market. Accused person deserves a deterred sentence for the offence he committed. He will suffer death as prescribed by law. Right of Appeal 14 days explain.

HON. A.ONG'INJO

JUDGE