



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 26 OF 2011

REPUBLIC PROSECUTION

VS

ROBERT MUGAMBI MUCHUBU ACCUSED

JUDGMENT

The accused Robert Mugambi Muchubu was charged with the offence of murder contrary to section 203 and as read with section 204 of the penal code.

Particulars are that Robert Mugambi Muchubu on the 19th day of April 2011 at Kandure Sublocation Naathu Location Igembe North Sub county in Meru County murdered Onesmas Kailika Salleh.

PW1 said when he heard screams from the road 100m from his home he proceeded to scene and found Onesmus Kailikia screaming and saying Robert Muchubu had stabbed him. It was on 19th April 2011 at 11.00 pm. PW1 said the deceased had been stabbed on the left thigh. PW1 said he was with Muthomi at the scene and Joseph Kamburi Swalleh Kimani and deceased persons mother also went to the scene. The deceased was taken to Maua Methodist hospital where he was pronounced dead on arrival. PW1 said that deceased was asking for water while lying down on the ground. He said the deceased was not drunk.

PW2 was in his Miraa farm at 11.00 pm when he also heard screams coming from the road. He also proceeded to the road while shouting and on arrival found his brother's son lying on the ground and was bleeding. He said he found PW1 and Silas Muthini at scene. He said he went to look for a vehicle to take the deceased to hospital. PW2 said the deceased talked to him and told him it was Robert Muchubu who stabbed him. PW2 said there was a lot of blood at the scene. That while going to hospital which was 10 km away the deceased kept on asking for water. That on arrival at hospital the deceased was pronounced dead and body was taken to mortuary. PW2 said the accused is his cousin as their mothers came from same area.

PW2 said Robert was found when police visited scene on 20th. PW2 said the deceased never used to drink. He said he didn't ask the deceased why accused stabbed him.

PW3 chief of Naathu location said that on 20th April 2011 at about 3.00 am he received a call from Swale Kimani who informed him his son Onesmus Kailikia had been stabbed and had died.

That he was informed it was Robert Muchubu who stabbed the deceased.

That in company of CPL Njoroge and APC Ndambuki and members of the public they searched and traced Robert Muchubu hiding under his bed. He was found at 1.00 pm and he was taken to Mutuati police station where he was charged and taken to court.

PW3 said that in the same house where accused was traced a small sword was also found under the bed and it had blood stains.

Dr Thiakunu C.K Mwirabua produced post mortem report in respect of the body of the deceased. He said there was a cut stab wound on left thigh posterior –blood vessel which runs at the back of the thigh was severed.

PW5 Government analyst produced Analysis Report. PW5 said the exhibit presented for examination was heavily stained with human blood and the DNA profile on blood stains on the knife matched DNA profile generated from blood sample obtained from deceased.

PW6 the investigating officer Robert Amke said Henry Saleh Kimani made a report of murder on 20.4.2011 and name of accused given as the suspect. PW6 visited scene at Kamukunji village and recorded statements of one Mr Muthomi who arrived at scene while deceased was still talking. He also learnt that Silas Mbarabu rushed deceased to hospital where he was pronounced dead on arrival. He arranged for post-mortem and took murder weapon that had been recovered from accused. That he took blood samples from deceased and together with blood

stained sword presented to Government Chemist for analysis to establish origin of blood on the sword. Sgt Robert Amke produced the Somali sword.

When accused was placed on defence he gave unsworn statement and said that he met the deceased in a wine and spirit shop and deceased bought for him beer. That at 11.00 pm when bar attendant wanted to close deceased had not been given change. That accused and the deceased left together and on the way the deceased said he could not go home without his change. That when he told the deceased that change remained at the bar they started quarrelling and deceased hit and injured him with a torch. Accused said he fell down and when he saw the deceased produce a sword from his belt they started struggling with him to disarm him as deceased swore to kill him. He said when he was able to get the sword he used it to stab him and they both fell down. He said that he removed the knife from the deceased and they both started screaming and he ran home. The next day he learnt that the deceased had died. He said he did plan to kill the deceased.

From the evidence on record the only issue due for determination is whether the accused person caused the death of the deceased accidentally or with malice aforethought.

The accused admitted that he stabbed the deceased and explained that it is the deceased who wanted to stab him. He insinuated the deceased must have been drunk or demanded for his change but PW1 and PW2 said that the deceased person never used to take alcohol. When PW1 and PW2 found the deceased he was asking for water and also saying the accused is the one who had stabbed him. He told PW1 and PW2 it was accused who stabbed him. The accused left the scene and didn't call for help for the deceased after stabbing him. He ran away and was found hiding under the bed when PW3 the chief and Administration Police arrested him while he was hiding under the bed.

I do find that the conduct of the accused after the commission of the offence is not one of a person who committed offence accidentally or in defence of self. I do find accused guilty of the offence of murder as charged and he is convicted under section 215 C.P.C.

HON. A.ONG'INJO

JUDGE

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

IN THE PRESENCE OF:

C/A:- Penina

Prosecution: - Mr Kinyua for state

Accused: - Present in person.

Mr Nyenyire Advocate for accused.

HON. A.ONG'INJO

JUDGE

Mr Kinyua

No previous records.

Mr Nyenyire Advocate in Mitigation.

Accused is remorseful. Accused is a young man. He was 21 years at the time he committed offence. He is 27 years now. The court should take into account the years he has been in custody. We pray for leniency.

The wanton and senseless murders have become committed in this county is worrying and a deterrent sentence is called for. Accused will suffer death as provided by the law. Right of Appeal 14 days explained.

HON. A.ONG'INJO

JUDGE