



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 78 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

IBRAHIM KIMATHI PAUL.....ACCUSED

JUDGMENT

The accused Ibrahim Kimathi Paul was charged with the offence of murder contrary to section 203 as read with section 204 of the penal code. Particulars are that Ibrahim Kimathi Paul on the 25th day of August 2014 at Lakothi village, Nguyuyu Location in Igembe South District within Meru County murdered Abed Kirimi alias Angaini.

From the post mortem Report produced by Dr. Maria Muthoni Mwangi – PW6 - the deceased died due to decapitation of the head. Post mortem was conducted on 29th August 2014 by Dr Guantai at Meru General Hospital.

The prosecution's case is that the accused told PW2 that he wanted to leave the area because he had killed Kirimi and that PW1 should be informed to go and guard his property accused had on the material day borrowed a spray pump to spray miraa for Kamenchu and they worked with the deceased the entire day.

When he returned the sprayer pump to PW3 Jacob Muthee at about 3.00 pm he again borrowed PW3's phone to call Zakayo.

That while talking to Zakayo through PW3 phone he was heard saying he had done something and wanted to leave that area. Later at 8.00 pm Shadrack PW1 called PW3 and told him that the accused had killed Kirimi the deceased. That when police came to the farm of Kamenchu where murder had been committed he gave them the pump he had given the accused during the day. That he recorded his statement and was released. He said accused was staying at a farm that bordered his own farm that of Shadrack but Kamenchus farm is one farm away from Shadracks. PW3 said that PW1 and PW2 are his brothers.

PW3 said that Shadrack and Kamenchu apprehended Kimathi who was at Shadrack compound. PW3 said that when accused returned pump he had clothes different from what he had in the morning. PW3 said accused was Shadracks employee for 3 years.

PW2 said accused told him to call PW1 Shadrack and Kamenchu to come and guard their properties as he had killed Kirimi and he wanted to leave the area. PW2 said that he called Kamenchu who had hired accused and the deceased on the material day to spray his miraa crops and also called Shadrack who was accused persons employees. When PW1 and Kamenchu went to the farm and confirmed Kirimi had been killed they were informed the suspect was at Shadrack's home and they went and arrested him. On the way to the farm met PW2 who accompanied them to the farm and they found Kirimi's head had been decapitated. PW2 said he is the one who picked the knife that lay between the deceased person body and the head. PW2 said those who were with accused when he killed Kirimi ran away. He said accused persons trouser had fresh blood stains on the knee area. PW2 said Kimathi wanted him to go to the farm and see body of Kirimi but he declined because he was alone and he feared.

When PW2 called PW1 – Shadrack to tell him that accused had killed Kirimi he called Kamenchu to verify the information and Kamenchu told him he had received similar information they agreed to meet and go to the miraa farm which belonged to Kamenchu. He said they found Kirimi's body at the farm as well as knife and there was a lot of blood between the body and the knife. He said they arrived at the farm at about 7.00 pm and were able to see the body using a torch he had carried. That while at the farm he got information the accused was at his home and they rushed to go and apprehend him. They found him sleeping in the open while drunk. They apprehended accused and took him to the police station where he was placed in cells and police went to collect the body to the morgue.

PW4 Inspector Joseph Kiplagat said on 25.8.2014 he accompanied Michael Kamenchu and Shadrack M'Itobi to a scene of murder in Kabuto in a miraa plantation. He said the deceased body didn't have a head which was hidden 10 metres away from the body. He said there was a pool of blood. That a fire had been lit around the place where there was a lot of blood under the fig tree. PW4 and P.C Latema removed body to the mortuary and sketch plan was drawn. It was suspected accused who had disagreed with the deceased at a liquor drinking place followed and killed him.

PW5 Marion Kathambi said that accused and the deceased differed while taking beer at her place and it is her husband who stopped them from fighting. She said that when Kirimi the deceased poured beer which Kimathi had ordered for, they quarrelled and wanted to fight and it is another young man who paid 30? for the beer that had been poured. She said Kirimi left and after 30 minutes the accused said he was going to check if sprayer they left at the farm had been returned. Later he learnt that Kirimi had been killed.

PW7 P.C. Latema also testified that on 26.8.2014 he received accused at the Kabuto Police Post from members of public on allegations he had killed Kirimi P.C. Latema accompanied IP Kiplagat and P.C. Juma and Peter Kithitu to the scene and collected the body PW7 draw sketch map and took body for preservation and post mortem at Meru Level 5 Hospital Mortuary.

PW1 was conducted on 29.8.2014 and a Report prepared. At close of prosecutions case accused was placed on defence and on his sworn statement he confirms he borrowed sprayer pump from PW3 to use at Kamenchus miraa farm. He said at mid-day he finished the worked and left Kamenchu at the farm with his worker after he was paid. He said he went to heard Zakayo his employers cattle upto 5.00 p.m when he returned home while preparing to take a bath he saw Kamenchu come with a mob of people.

That Kamenchu asked him where the person who assisted him at the farm was and he said he had left them together. He said a rope was used to tie him. He said he didn't go with deceased to drink and he didn't see him again after he left them at the farm. He said it was the 1st time he saw the deceased when they worked together at the miraa farm. He said he was beaten badly so he could show where the deceased was. He said he didn't see John Gitonga on the material day. He said he only saw Kamenchu and Jacob Muthee who gave him sprayer pump.

From the evidence on record the issues for determination is whether prosecution has proved beyond all reasonable doubt that the accused person herein murdered the deceased. The fact of death was confirmed by all prosecution witnesses PW1, PW2, PW3 and the 2 police officers who visited the scene and found the deceased body severed from the head and that there was a pool of blood at the scene in the miraa farm. PW6 Dr Guantai examined the body and established cause of death as decapitation of the head. The Post mortem Report was produced by Dr Maria Muthomi. PW2 and PW3 learnt of the death when the accused person himself went round saying he had killed Kirimi and he wanted to leave the area. That accused wanted PW2 to go and see the body of Kirimi at the miraa farm but he refused because of fear. He said accused person had fresh blood stains on the knee of his trouser. Although accused denies having seen John Gitonga PW2 on the material day, he does not deny having told PW3 the same thing that he had killed Kirimi and that his employer should be called to guard his property as he wanted to leave the area. PW1 said that while he and Kamenchu were at the miraa farm where the deceased had been killed, they were informed that accused was at his home. They proceeded there immediately and found accused lying down in the open ground and he was drunk. Accused claims it is Kamenchu who went for him at his employer's home. He has also avoided confirming or denying that PW1 was with Kamenchu when they found him lying on the ground drunk at PW1's home.

Accused denies that he went with the deceased to a drinking den but PW5 said they went to drink at her home and it is her husband who separated them when they wanted to fight. Accused claimed that PW5 was paid to implicate him but he didn't give any reason why she could implicate him because they differed.

In consideration of the evidence adduced by the prosecution although there was no eye witness to the murder the circumstances surrounding the death all point to the accused as the culprit. I do find no other reasonable explanation other than that it is accused who murdered the deceased. I do find him guilty as charged and he is convicted under S.215 C.P.C.

HON. A.ONG'INJO

JUDGE

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

In the presence of

Accused: Present in Person

Prosecutor : Mrs Mwathi

Mr Mutunga Advocate for accused

HON. A.ONG'INJO

JUDGE

Mrs Mwathi

I do not have records for accused. He may be treated as 1st offender.

Mr Mutunga Advocate in Mitigation for accused.

Accused is remorseful. He has been in custody. He has 2 minor children who are under the care of his ailing mother. He has been obedient since time of incarceration. We pray for leniency and non custodial sentence. We seek for a copy of judgment.

Order

M.22.10.2018 for victim Impact statement. Accused remanded in custody.

Copy of judgement to be supplied to defence and state.

HON. A.ONG'INJO

JUDGE