



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

CRIMINAL CASE NO. 45 OF 2014

REPUBLIC..... PROSECUTOR

VERSUS

EVANS KIBOI MATAKWEIACCUSED

J U D G M E N T

1. The accused was charged with the offence of **Murder contrary to section 203 as read with Section 204 of the penal code**. The particulars of the offence is that **on the 2nd day of September 2014 at Chepkorok farm within trans Nzoia County unlawfully murdered Bernard Munialo Sirengo**.

2. The accused denied the offence and the prosecution called 2 witnesses whose evidence can be summarised as hereunder.

3. **PW1** the star witness testified that she was asleep on the night of 2/9/2014 when she heard some screams from outside. The person screaming was the accused who was his neighbour. He took a torch and went outside and found him stabbing the deceased alleging that he had killed his uncle. He did stab him severally. She rushed to call the neighbours. The deceased told him that he had not killed his uncle.

4. The neighbours came but were afraid. She went back to sleep till the following morning when the police arrived. She advised them to go and arrest the accused.

5. **PW2 Dr. Okumu Moses** produced the post mortem report on behalf of Dr. Odhiambo who opined that the cause of death was cardiopulmonary arrest due to internal bleeding.

6. When put on his defence the accused gave unsworn evidence denying the charge. He said that he was at home on 2nd September 2014 when he left for Kimilili to carry out his masonry work. At around 12.00 pm he was approached by someone in a suit who said that he was looking for him. He had a pistol and he threatened to shoot him. He was taken to Sikhendu police station where he was accused of having killed someone. Later pw1 came and accused him of killing his brother. He said that he was beaten by the police and accused of being one Matakwei. He was later transferred to Kitale where he was finally charged. He denied that any of this uncle had died.

Analysis and Determination

7. The court has carefully perused the proceedings herein as well as the submissions by the learned state counsel. Apparently there were no submissions on the part of the defence.

8. It is apparent that the only eye witness to the incident is PW1. No other witnesses included the investigating officer were called and in particular the 3 people mentioned by PW1 that they witnesses the incident that night.

9. Be it as it may, the provisions of Section 143 of the Evidence Act does not envisaged a specific number of witnesses to prove an offence. Consequently the two prosecution witnesses are capable of proving that an offence occurred.

10. Although the incident occurred at night, it is apparent that the accused as well as PW1 are well known to each other. They are neighbours. It is not therefore farfetched from the witness not to have seen what transpired.

11. The stabbing severally of the deceased as witnessed by PW1 was consisted with the findings of PW2, specifically the postmortem report. There were multiple injuries as found by Dr. Odhiambo. PW1 equally said that the deceased had been stabbed severally by the accused.

12. On the question of identity and being at the scene I find that the same was clearly proved.

13. The action of stabbing clearly demonstrates that there was malice aforethought on the part of the accused. He clearly knew that the consequences of such repeated stabbing would be to cause fatal wounds to the deceased.

14. Neither does his defence offer any probative value. He did not grant the chance the prosecutor to cross-examine him especially on the issues of whether or not he was at the scene that night.

15. In the premises I find that the prosecution has established its case beyond any shadow of doubt. The ingredient of malice aforethought clearly was proved. The accused was placed at the scene that night. PW1 saw him stabbing the deceased repeatedly ostensibly that he had killed his uncle.

16. The accused is hereby found guilty of murdering the deceased herein as per the provisions of Section 203 of the penal code.

Delivered, signed and dated at Kitale this 19th day of December, 2018.

H.K. CHEMITEI

JUDGE

19/12/18

In the presence of:

Mr. Kakoi for State

Mr. Nyamu for Karani for Accused

Accused – present

Court Assistant – Kirong

Judgment read in open court.