



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL CASE NO 9 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

ANTHONY KARANJA NJERU.....ACCUSED

JUDGEMENT

1. The accused is charged with the murder of Sospeter Njiru Njeru, which is contrary to section 203 as read with section 204 of the Penal Code (Cap 63) Laws of Kenya. He pleaded not guilty. The state called 9 witnesses in support of the charge.
2. The accused made an unsworn statement and did not call any witness for his defence. Counsel for the accused adopted her submissions at the close of the prosecution case as her submission at the close of the main trial.
3. The prosecution through John Mugendi (PW 1), testified that on 23/5/2016 at 3.00 p.m., he was in the company of the deceased making bricks, amongst other people. At that time the accused brought a customer to buy bricks from one Kennedy. He further testified that the accused was a broker in buying bricks. As a result, the deceased rang his employer Kenneth Njeru Ganita (PW3). The deceased told PW 3 that the accused had come with a lorry. PW 3 instructed the deceased not to sell the bricks to the owner of the lorry through the accused. The reason being that that lorry already had other bricks.
4. As a result, the deceased and the accused person started exchanging bitter words, which led to a quarrel. After that, they started fighting physically using fists and leg kicks. The deceased then fell down. The accused person then took off with the lorry and left the scene. The following day, this witness learned that the deceased had died. While under cross examination, PW 1 denied that the deceased climbed on top of the bricks from where he fell down. It was also the testimony of PW 1 that the deceased and the accused were drunk.
5. Kenneth Njeru Ganita (PW 3), testified that he was a businessman who makes and sells bricks. PW 3 further testified that the deceased was his employee, whom he had instructed not to sell bricks to the accused, since the lorry had some other bricks. He further testified that the deceased person rang him and told him that the accused was assaulting him. He also rang him thereafter that they had stopped fighting at about 3.00 p.m. on 23/5/2016. It was also his evidence that the accused person has seriously assaulted him for refusing to sell bricks to him (the accused).
6. Furthermore, there is the evidence of Beatrice Kina (PW 4), who is the mother of the deceased. She testified that she saw the deceased on 23/5/2016 at 6.00 p.m. with a swollen mouth. She then asked the deceased what had happened. The reply of the deceased was that they had fought with the accused at Rukanga. The following morning on 24/5/2016, she went to the house of the deceased and found him

lying on bed face downwards. She saw the deceased vomiting blood. When she touched his body, she found that the body to be cold.

7. There is further evidence of Wilson Muriithi (PW 7). PW 7 like the deceased and the accused person was a brick maker at Rukanga. It was his evidence that the employer of the deceased person had instructed the deceased not to sell the bricks to the accused. As a result, the deceased told the accused person not to mix the bricks of his employer with those in the lorry. After refusing to sell bricks to the accused, the accused became annoyed and began beating the deceased using his hands. Those who were present at the scene included George, PW 1 and others whose names he could not recall. Those other people told the accused to stop assaulting the deceased.

8. While under cross examination, PW 7 testified that he was in good terms with the accused person. He then saw the deceased person walking away in a zig zag manner.

9. Furthermore, this incident was reported to the police in particular to PC Meshack Meeme Mwanthi (PW 8). PW 8 went to the home of the deceased person. He saw the body with a swollen mouth and head in particular at the back. PW 8 was told by the mother of the deceased person that it is the accused who had assaulted him. He was also told that the cause of the fighting was due to the refusal of the deceased in refusing to sell bricks to the accused person.

10. The post mortem examination report was put in evidence by consent as exhibit PEX 2. According to that report, the deceased was aged 38 years old. The external appearance of the body was that he had blood clots in the nostrils and mouth. Additionally, he had a cut wound on the tongue. There were bruises on the chest, face, forehead and the right iliac area. He also found peripheral cyanosis. All the internal organs were normal except that there were blood clots under the scalp on the right side of the head. There was also a left sided subdural haematoma. The doctor concluded that the cause of death was due to head injury due to trauma. He then put in evidence the post mortem report as PEX 2.

11. Furthermore, the accused was taken for mental assessment and the examining consultant psychiatrist, Dr. J. N. Thuo found that the accused was fit to stand trial. He put the mental assessment report in evidence as prosecution exhibit PEX 1A.

12. Finally, there was the evidence of Anthony Kariuki Ndwiga (PW 2) who turned out to be a hostile witness. He testified that both the deceased and the accused were brick makers. He also testified that he heard the deceased say that the lorry was not to be loaded with bricks. He also testified that he only heard that the deceased was dead. Finally, he testified that he was arrested by the police.

13. In his unsworn testimony, the accused stated that on 23/5/2016 he took his child to Subrina Academy. He further testified that at about 8.30 a.m., a brick customer by the name Kibaru Kambuthu approached him with a view of getting two thousand bricks. He further testified that he first met the deceased in a local bar called Muraguri and while there, the deceased abused him and shortly thereafter, the brick customer's lorry came and they left. Furthermore, he testified that they met for the 2nd time at Rukanga, where the brick customer was still looking for bricks. He saw the deceased coming out of a maize shamba. The deceased then approached them. He then started calling the accused person a broker and a thief. The deceased proceeded to tell him that he was not going to sell him bricks and that he was a manager. At that point in time, the deceased climbed on top of a layer of bricks. He then fell down from the top of those bricks which were 5 feet high. The accused in response told the deceased that God had avenged on his behalf. As a result, the deceased got annoyed and proceeded to get hold of the accused person. He threw down the accused person since he was more powerful than the accused. At that point in time, the customer intervened and separated them. The accused then boarded the lorry with his customer leaving behind the deceased. He then put in evidence an Mpesa print out dated 23/5/2016 as evidence that he was paid by his customer sh.16,600/-, of which he withdrew sh.16,420 from his Mpesa account.

14. I have considered the prosecution and defence evidence. I find from the entire evidence that the deceased and the accused were brick makers at Rukanga. I also find that its common ground that both the

accused and the deceased were drunk on the material date of 23/5/2016. This is clear from the evidence of John Mugendi (PW 1). I also find that the deceased and accused had bitter exchanges at Rukanga which ended in a fight between them.

15. According to the evidence of his employer Kenneth Njeru Ganita (PW 3), the deceased told him that the accused had seriously assaulted him for refusing to sell bricks to him (the accused). Furthermore, there is the evidence of Beatrice Kina (PW 4), who was the mother of the deceased, who testified that his son, the deceased had fought with the accused. There is further evidence of Wilson Muriithi (PW 7), that it is the accused who started to beat the deceased using his fists as a result of which the deceased bled from the mouth. It is also the evidence of PW 7 that one George, Mugendi (PW 1) and others told the accused person not to assault the deceased. It is this PW 7 who saw the deceased walking in a zig zag manner. PW 7 further testified that they were in good terms with the accused person.

16. The issue that has to be decided is whether or not it is the accused who inflicted the fatal injuries on the deceased person. Additionally, the other issue to be decided is whether or not the accused had the intention to murder the deceased person.

17. ISSUE NO. 1

I find from the prosecution witnesses John Mugendi (PW 1), Kenneth Njeru Ganita (PW 3), Beatrice Kina (PW 4), Wilson Muriithi (PW 7) and PC Meshack Meeme Mwanthi (PW 8) that it is the accused person who inflicted the fatal injuries that caused the death of the deceased.

18. ISSUE NO. 2

There is evidence of John Mugendi (PW 1) that both the accused and the deceased were drunk. There is further evidence of Wilson Muriithi (PW 7) that it is the accused person who started to beat the deceased person, and as a result, the deceased bled from the mouth. There is ample evidence that it is the refusal of the deceased person to sell bricks to the accused person that caused a quarrel between them, which ended up in a fight between them. The evidence of the doctor who performed the post mortem examination found the cause of death to be head injury due to trauma. He also found bruises on his chest. Finally, he found blood clots under the scalp right side of the head with a swelling on the left side. In the circumstances, I find that these injuries were consistent with the fists and kicks applied by the accused against the deceased person.

19. The defence of the accused is that he did not cause the death of the deceased person. He testified that they fought with the deceased at Rukanga, where the bricks were being sold. He further testified that the deceased climbed on top of a layer of bricks that were 5 feet high, from where he fell down. In this evidence, the accused was implying that the deceased died from injuries that he sustained when he fell down. I do not believe his evidence in view of the eye witness evidence of PW 1 and PW 7. There is further credible evidence from the dying declarations of PW 3 and PW 4 that the accused had assaulted him. I therefore find that the unsworn defence evidence is incredible and I therefore reject it.

20. Furthermore, I find from the totality of the evidence that the offence committed is one of manslaughter contrary to section 205 of the Penal Code (Cap 63) Laws of Kenya. I therefore find him guilty of manslaughter and convict him accordingly.

Judgement dated and signed this 5th day of December, 2017.

J. M. Bwonwonga

Judge

5/12/2017

Judgement delivered in open court this 20th day of December 2017

in the presence of

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F. MUCHEMI

JUDGE