



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 98 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

CHRIS MUNENE KILONZO.....ACCUSED

JUDGEMENT

Chris Munene Kilonzo, accused, was originally charged jointly with Jimmy Macharia Kareithi and others not before the court, with the murder of Michael Githinji Njoroge (deceased) contrary to section 203 as read with section 204 of the Penal Code. The offence is alleged to have been committed on the 9th day of October 2014 at Quarry (Kware) Area in Embakasi within Nairobi County.

The prosecution presented evidence of ten (10) witnesses who testified that on 9th October 2014 at about 5.20m, John Mbugua (PW1), an employee of Honour Agencies, in company of his friends Solomon Kamau (PW2), Samuel Ngario, George Ngatia (PW3) and Michael Githinji (deceased) went to High Rider Flats in Kware, Embakasi Nairobi to collect rent from the tenants of House No. 34 owned the PW1's employer. The tenants in that house had fallen in rent arrears for two months. They knocked at the door of House No. 34 but there was no answer. While still at the door, two (2) people approached them and warned them not to demand rent from the occupants of House No. 34. PW1 and his friends decided to retreat and perhaps seek help from the police although evidence shows that they did not go to report to the police. On descending the stairs, they found about twenty (20) people gathered downstairs. This group of people also warned PW1 and his group not to ask for rent from the tenants of House No. 34. PW1 and PW2 left to a different direction while the deceased and Samuel Ngario left together to another direction. PW3 went away alone.

Evidence shows that the deceased and Samuel Ngario were attacked and seriously beaten after walking a short distance from the rental house. The deceased died at the scene of the attack while Samuel sustained serious injuries. He was taken to hospital at Metropolitan and later transferred to Kenyatta National Hospital. He recovered from the injuries. The body of the deceased was taken to the City Mortuary. It was later examined by Dr. Peter Muriuki Ndegwa (PW8), who found multiple bruises and lacerations on the deceased's face and head, contusions on the global scalp, intracranial haemorrhage and signs of intracranial pressure. The opinion of the doctor was that the deceased died as a result of head injuries due to blunt force trauma.

Following the death of the deceased, the accused person and Jimmy Macharia Kareithi were arrested at different places on that same day and later charged with this offence. Jimmy Macharia Kareithi was acquitted after this court found that he had no case to answer. Reasons for this finding were reserved until this judgement. I will be giving those reasons in the course of this judgement. Chris Munene Kilonzo was placed on his defence.

The accused gave unsworn defence. He testified that he and two other people whose names he did not give were inside House No. 34 Rider Flats and that at about 4.00am on 9th October 2014 while still asleep they heard voices of about five people from outside. They were commanded to open the door but hesitated. The people outside were also hitting the metal doors of that house with stones with a view to opening it. He testified that the commotion of hitting the door woke neighbours who started shouting “thieves, thieves” and chasing the people, identified as caretakers, away. The accused told the court that the deceased and the other people he was with were beaten by the mob and that at the time of the assault he was still inside the house whose door was locked from outside. He testified that PW4 Douglas Anada opened for them. He said he and Jimmy Macharia were arrested later that morning and taken to Mukuru Kwa Njenga Police Post where he was ordered to undress. He said his trousers were blood stained from his hand injury caused by the debris from the breaking of the door. He said that at the Police Post Report Office commonly referred as the Occurrence Book Area was a carton with cotton wool, stone and dirty shoes which had blood stains. He said both he and Macharia were ordered and forced to place his clothes in that carton. He said that if his shirt had bloodstains from deceased’s blood it was because his clothes got mixed up with the blood-stained cotton wool and the other items.

The burden of proving the offence of murder lies with the prosecution who must tender evidence to prove beyond reasonable doubt that the deceased died as a result of an unlawful act or omission by the accused before the court and that the accused possessed malice aforethought. I have examined the evidence in totality and the defence by the accused. It is my finding and I so hold that the fact of death of the deceased has been proved beyond reasonable doubt. However, evidence of who killed him and whether that person had the intention to kill him is, in my view, weak. When I considered this evidence at the time of determining whether the two accused persons before the court at that time had a case to answer or not, I noted that the only evidence connecting the accused now before the court with this offence was the DNA profiles generated from his shirt. This court was told that the DNA profiled from the accused shirt matched the blood from the deceased collected from the scene of crime. The clothes worn by Jimmy Macharia Kareithi who was the first accused did not contain any matching DNA profiles. This is the main reason I acquitted Jimmy Macharia Kareithi at the no-case-to-answer stage.

I have examined and analysed the other evidence. The defence of Chris Munene Kilonzo, the accused before the court agrees with the evidence of PW4 Douglas Anada. PW4 told the court that his cousins were in House No. 34 and he was called by his cousins he referred to as Jimmy Macharia and Boniface Kamau. PW4 did not name Chris Munene Kilonzo as one of his cousins but he said there were three occupants in House No. 34 and that he did not know the third person. PW4 said the house was closed from outside and that he is the one who opened for the occupants. The prosecution did not seek to clarify this evidence or to show that the accused was not one of the occupants in House No. 34.

There is no evidence to show that the accused Chris Munene Kilonzo or Jimmy Macharia Kareithi were part of the people that attacked and assaulted the deceased and his colleague. PW4 said that Jimmy Macharia and the other two occupants were still in the house when the group of people attacked the deceased. He said that the youth going to work in construction sites chased the caretakers and attacked them. PW5 who worked with the deceased testified that he was called and went to the scene where he found about 100 people and deceased with another person near a heap of stones. He said that the deceased and the other person were beaten on suspicion that they were thieves.

PW6 IP Evans Oguta was on duty when he came across a group of people surrounding two bodies. He was told that the bodies belonged to some thieves. He said PW5 James Mwai is the one who told him that the victims were not thieves. Evidence shows that it is PW5 who told PW6 that the tenants of House No. 34 had assaulted the deceased and Samuel Gathogo. PW5 did not testify to this. PW5 told the court that it was one Jacob who had informed him that the tenants of House No. 34 had attacked the caretakers. Jacob was not a witness and therefore this court is not able to verify this information.

PW6 who arrested the accused before the court testified that he was informed by the owner of a shop that the accused was hiding in that shop. PW6 did not identify who the owner of the shop was nor did this person testify to verify this evidence and therefore I have no evidence to show how the accused was identified for the arrest.

After reviewing all the evidence, I find no credible evidence connecting the accused person with the assault. This leaves the evidence of the DNA. The accused has given his defence and explained what he thinks led to the deceased's blood on his shirt. The law does not place any burden on him to prove his innocence. In his defence as to how he thinks his shirt got the blood from the deceased, I find that he has raised the reasonable doubt in my mind because there is no other evidence connecting him with the assault. His evidence that he was in the house when the deceased was assaulted is confirmed by the evidence of PW4 and I have no reason to doubt it.

My conclusion of this matter is that the prosecution has failed to prove this case to the standard required by the law. I find that I have reasonable doubts in my mind in regard to the involvement of Chris Munene Kilonzo in the assault leading to the death of the deceased. Consequently, I find that the accused, Chris Munene Kilonzo is not guilty of the murder of Michael Githinji Njoroge. I hereby acquit him forthwith and order his immediate release from custody unless for any other reason he is so held. Orders shall issue accordingly.

Dated, signed and delivered this 20th December 2016.

S. N. Mutuku

Judge

In the presence of:

Ms Khaemba for the prosecution

Mr. Oduor for the accused persons

Mr. Chris Munene Kilonzo

Mr. Daniel Ngumbi, court clerk