



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE
CRIMINAL CASE NO. 54 OF 2011

REPUBLIC PROSECUTOR

VERSUS

FRED WAFULA OYUGI ACCUSED

J U D G M E N T

1. The accused, **Fred Wafula Oyugi**, was charged with Murder, contrary to **Section 203** read with **Section 204** of the Penal Code, in that on the **21st September, 2011**, at **Lips Bar Kitale Town Trans-Nzoia County**, murdered **Jackson Maina Macharia**.
2. The case for the prosecution was that the deceased was the proprietor of the club known as Lips Bar in Kitale Town while the accused was a former employee of the club where he worked as a club “bouncer”.

On the material date at about 9.45 pm, the club was patronized by football fans who were watching a game of football on T.V. The club disc jockey (D.J) was **Geoffrey Wabomba (PW1)**. He was operating the T.V channels and at one point left his cubicle and on his return found the accused therein.

3. The accused was at the time intoxicated. He left the cubicle and proceeded to sit at a particular spot in the club. The deceased then confronted and told him to leave the club. He left but was followed behind by the deceased. Shortly thereafter, screams were heard. The D.J stopped playing the music and the deceased was seen re-entering the club while holding his neck. He was immediately rushed to hospital where he died while undergoing treatment for stab wounds.
4. **Jeff Anwar Asango (PW3)**, was at the material time employed at the club. He heard some noises in the club and saw the deceased following the accused outside the club. Thereafter, the deceased shouted his (PW3) name. He saw him (deceased) retreating to the club with his hand holding his neck and appearing as having been injured. He was bleeding profusely from the neck and was rushed to hospital where he died.
5. **Patrick Kimamo (PW4)**, uncle to the deceased and **Jane Nyambura Mwangi (PW5)**, wife to the deceased, proceeded to the hospital after being informed that the deceased had been stabbed with a knife by a former employee. They arrived at the hospital and found that the deceased had died. They later identified his body for post-mortem purposes.
6. **Dr. Blastus Kakundi (PW6)**, carried out the post-mortem on the body of the deceased and compiled the necessary report [P. Exhibit 2(a)] showing that the cause of death was cardio pulmonary failure secondary to severe haemorrhage from severed major blood vessels with

asphyxia from a cut on the trachea.

P.C William Kemboi (PW2), of the Scenes of Crime Section C.I.D Kitale, took photographs of the body of the deceased [P. Exhibit 1(a) – (c)] showing the injury on his neck.

7. The case was reported to the police at Kitale police station. **P.C Chrispinus Alwany (PW7)**, took over the investigations from a departed colleague and found that the necessary statements had been recorded from witnesses. These revealed that the accused went to the club on the material date much to the annoyance of the deceased who then asked him to leave. In the process, a quarrel ensued between the two. They held, struggled and fought with each other with the result that the deceased suffered a serious injury after being stabbed with a knife by the accused who thereafter reported at the police station and was arrested. He was charged with the present offence after the demise of the deceased.
8. In his defence, the accused denied the offence and stated that he was on duty at a place called Modern Bar after which he decided to proceed to his former place of work at Lips club to entertain himself. He arrived there, bought and drank some bottles of beer before he was suddenly confronted and told by the deceased to leave the club. He left and went outside the club on his way home. But, minutes thereafter, the deceased attacked and slashed him on the abdomen with an object. He fell down and was hit on the head. He lost consciousness due to excessive bleeding. His screams attracted members of the public who separated him from the deceased.
9. Members of public led him to the police station where he reported an act of assault committed against him. He slept on a bench at the police station as he waited for the police to take necessary action and due to injuries suffered by himself coupled with his intoxication. He later found himself in the police cells. His blood stained items were taken away and he was taken to Kitale District Hospital where his blood samples were taken. He was later charged with the present offence.
10. From all the evidence, it is apparent that the cause of the death of the deceased from a serious injury to his neck most probably caused by a sharp object was not disputed and was confirmed by the post-mortem report.

The issue for determination was therefore whether the fatal injury occasioned to the deceased was as a result of an unlawful act of assault on the part of the accused and if so, whether he acted with the intention to kill the deceased.

11. None of the club's employees present at the material time of the incident (i.e PW1 and PW3) saw the accused in the act of stabbing or assaulting the deceased with a knife or any other sharp object. The aspect of the accused drawing out a knife and stabbing the deceased came from the investigating officer (PW7) without any supporting evidence from any witness. In any event, the alleged knife was never recovered to link it with the accused and the offence.
12. The evidence by the two key witnesses (PW1 and PW3) was essentially to show that the accused went to the club and was told by the deceased to leave but not without a commotion which involved both of them turning physical followed by the accused leaving the club with the deceased in pursuit of him. What happened at that juncture was not made clear by any of the witnesses but what was certain was that the deceased returned to the club holding his bleeding neck and alleging that he was injured by the accused.
13. The accused did not deny having been involved in a physical confrontation with the deceased. He however, implied that the deceased was the aggressor and that he may have injured him when he (deceased) confronted him (accused) outside the club. He further implied that the confrontation was violent such that it may have led to him suffering injury on his abdomen and the deceased suffering injury on his neck which later proved fatal.

14. It was quite clear therefore that most likely than not the deceased suffered the fatal injury while involving himself in an extremely violent confrontation with the accused who may only have acted in self defence but went further to use excessive force on the deceased. Indeed, the deceased was the aggressor as shown by the fact that he followed the accused outside the club after the accused had accepted to leave hitherto reluctantly.

15. The presence of the accused in the club may be viewed to have been an act intended to provoke the feelings of the deceased but then, he was at liberty to peacefully entertain himself at any club including where he had previously been employed. His going to the former club cannot therefore be said to have been with intention to assault and kill the deceased. In any event, there was no evidence to suggest as much.

The action by the deceased in asking the accused to leave the club was in exercise of the management's power to ask any patron to leave the club, only that he did it in an uncivilized and unreasonable manner.

16. This court does not find that the accused had the necessary malice aforethought to kill the deceased when he injured him with what was seemingly a sharp object. He is therefore found not guilty of murder but guilty of manslaughter, contrary to Section 202 (1) of the penal code for which he is now convicted.

J.R. KARANJA

JUDGE

23/7/2015

[Delivered and signed this **23rd** day of **July**, **2015**]