



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL CASE NO. 53 OF 2013

REPUBLIC..... PROSECUTOR

VERSUS

MUSEMBI MULEIACCUSED

JUDGMENT

MUSEMBI MULEI hereinafter referred to as the Accused is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code.

The particulars are that:

“On the 23rd day of October, 2013 at about 8:30 m at Maweni Village Bura Ndogo area within Taita Taveta County he murdered Samuel Mwalili”.

he prosecution called eleven (11) Witnesses. The Accused gave a sworn statement.

Brief facts for the prosecution

Tobias Owuor Wandera (PW 2) operates a pool table at a place called Bura Ndogo. On the 23rd day of October, 2013 at about 6:00 pm the Deceased and PW 1 Patrick Chula Maingo picked a quarrel while at the pool table. PW 1 told them to leave the premises. After a period of close to half an hour later, the Accused went to PW 2's joint and played pool table for about one hour and left. Later at about 8:30 pm they received information to the effect that the Deceased had been stabbed with a knife.

PW 6 (Bernard Kanyi) did testify that he met the Accused on 23rd October, 2013 at about 9:00 pm and he told him that he had killed somebody. He did not take him seriously. The following day he received information that a man had been killed in the neighborhood. While in the company of one Musa (PW 6) they decided to go to the house of the Accused. Upon arrival and entering into the house, they searched and recovered a blood stained knife under the mattress. They took the Accused to Taveta police station. PW 7 (Musa Ali) on 24th October, 2013 received information that the Accused had killed a man at a place where pool game was being played. They proceeded to the house of the Accused and found a knife under his mattress. It smelled blood. They took the Accused to police station together with the knife.

Chief Inspector Duncan Njau (PW8) received information that the Deceased was playing pool when he was stabbed. He proceeded to the scene where he arrested Patrick (PW 1) who it was alleged had differed with the Deceased. The following day members of public took the Accused to the police station alleging that he had confessed to having killed the Deceased. A knife was handed over to police but it was not

blood stained.

This is a poorly investigated case. If the scene of murder was at a pool table and happened during hours of operation, there must have been eye Witnesses but none of the prosecution Witnesses have mentioned having seen the Accused stab the Deceased. The evidence before the Court is that the Deceased had disagreed with PW 1 and they had been ordered to leave the premises which they both did. The Accused is alleged to have gone to play pool table after the Deceased and PW 1 had left.

Evidence by PW 6 (Bernard Kanyi) and PW 7 (Musa Ali) appears to have been relied on by police and charging the Accused. PW 6 told the Court that it is the Accused who told him that he had killed somebody. This was without prompting from any quarter and after a casual meeting on a path. PW 6 and PW 7 decided to go and confront the Accused, the following day even before reporting the matter to police. They allegedly recovered a knife under a mattress from the house of the Accused.

PW 6 told the Court that the knife was blood stained.

PW7 testified that he recovered the knife under a mattress belonging to the Accused and that it was smelling blood. He did not state that it was blood stained.

Chief Inspector Duncan Njau PW 8 received the knife from members public. He told the Court that the knife was not blood stained.

The evidence of the recovery of the knife in the house of the Accused was primarily intended to link the Accused with the murder.

PW 6 and PW 7 have given contradictory evidence as to whether the knife was blood stained or not. The officers who received the knife did not find or observe any blood stains on it. There is nothing to show that this was the murder weapon.

Nobody saw the Accused stab the Deceased and there is no evidence to the effect that the two had met on the fateful night either at the pool table or elsewhere.

The prosecution has not proved this case beyond reasonable doubt. The Accused is found not guilty of the offence of murder contrary to section 203 of the Penal Code and he is acquitted accordingly under section 322 of the Criminal Procedure Code.

He is set at liberty unless otherwise lawfully held.

Judgment delivered, dated and signed in open Court this **17th** day of **November, 2015**.

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M. MUYA

JUDGE

17TH NOVEMBER, 2015

In the presence of:-

Learned Counsel for the prosecution Miss Ogweno

Learned counsel for the defence Mr. Mushelle holding brief Omari

Court Assistant Musundi

M. MUYA – JUDGE

17/11/2015