

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO.32 OF 2010

REPUBLIC.....PROSECUTOR

VERSUS

PAUL MUTINDA LEONARD.....ACCUSED

JUDGEMENT

Paul Mutinda Leonard, the accused herein 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 were that on 23rd April 2010 at Mathare slums in Nairobi, the accused murdered John Macharia (hereinafter referred to as the deceased). When the accused was arraigned before this court, he pleaded not guilty to the charge. The prosecution called six (6) witnesses in their bid to establish the case against the accused. After the close of the prosecution's case, counsel for the accused presented to the court written submission on no case to answer. The prosecution filed its submission in response thereto. This court, after considering the evidence, and the said submission, put the accused on his defence. He gave unsworn statement denying the charge. It was his case that the charge against him had been contrived to frame him for an offence that he did not commit.

According to PW3 PC Ronald Museti, on 22nd April 2010 while he was on duty at the report office at Muthaiga Police Station, the accused went to the police station at about 8.05 p.m. The accused reported to him that he had stabbed his friend and was requesting the police to grant him safe custody. PW3 detained the accused at the police station. He entered the report under Occurrence Book (OB) Report No.64 of the same date. PW3 testified that when he inquired from the accused the reason why he had stabbed his friend, the accused told him that he had stabbed him after he had had a quarrel with the friend. He told PW3 that he had stabbed the friend using a knife. PW3 recalled that the accused appeared normal. PW3 explained that on the following day, the matter was allocated to another police officer by the OCS to investigate. This police officer was PW4 PC Florian Musoko. He told the court that on 23rd April 2010, he was instructed by the then OCS of Muthaiga Police Station CIP Ringera to conduct investigation in respect of the report that had been made by the accused. He was informed by the OCS that after the accused had made a report to the police regarding the stabbing incident, members of the public brought the friend of the accused to the police station. He brought to the police station about 10 minutes after the accused had made the report to the police. He had a stab injury on his abdomen. The friend was rushed to Kiambu District hospital for treatment on instructions of the OCS. The friend succumbed to his injuries. That friend is the deceased in this case.

Meanwhile, when PW4 failed to elicit any information regarding the whereabouts of the deceased at Kiambu District Hospital, the accused was released from police custody on 27th April 2010 on instructions of the OCS. The release report was recorded under OB No.17 of the same date. The accused was released with instructions that he reports back to the police station. He did not. After PW4 got the information that the deceased had died as a result of the injuries that he had sustained in the stabbing incident, he sought the accused. PW4 was able to arrest the accused on 13th May 2010 as shown in the OB No.43 of 13th May 2010. The OB reports of the various dates were produced as Prosecution's Exhibits No.1, 2 and 3 respectively.

When he was put on his defence, the accused denied the charge. He told the court that he did not assault the deceased. He attributed his travails to a disagreement that he then had with a police officer then based at Muthaiga Police Station. It was his evidence that the police officer by the name Leonard Musati, who happened to be the Arresting Officer, disagreed with him when he refused to pay protection money to him for operating a kiosk in Pangani area of Nairobi. He recalled that on 23rd April 2010, the said police officer met him at a bridge and stopped him. He demanded a bribe. When he refused, he was taken to the police station and later charged with the offence of murder which he was not aware of. He testified that while in custody he was beaten by the police. He denied any knowledge of the circumstances that led to the death of the deceased.

PW4 was assigned to investigate the case. He went to Kiambu District Hospital but was unable to trace the deceased. This was because he did not have the name of the deceased. After being detained at the police for four (4) days, the accused was released. Meanwhile PW1, the aunt of the deceased became concerned of the whereabouts of the deceased. After making inquiry, she learnt that the deceased had been stabbed by a neighbour. She also established that after the incident, the deceased was rushed to Kiambu District Hospital for treatment. She went to Kiambu District Hospital only to discover that the deceased had died. She gave this information to the police. The police swung into action. They sought and arrested the accused. Upon his arrest, the accused was seen by Dr. Zephania Kamau to assess his mental status. The doctor observed that the accused had a stitch injury on the left frontal scalp. The accused told the doctor that he sustained the injury when he fought with the deceased. The post mortem report clearly showed that the deceased met his death from the injury inflicted by the knife stab. The knife that was used to stab the deceased was not recovered.

In the premises therefore, this court holds that the prosecution established the *actus reus* of the case. It established that it was the accused that stabbed the deceased thereby causing him to sustain fatal injuries. As regards *mens rea*, this court formed the view that the accused killed the deceased unintentionally. The evidence on record clearly showed that the accused and the deceased fought. Both had injuries. However, it was apparent that the accused used unreasonable force during the fight. It is not clear what weapon the deceased used to inflict the injury on the accused. PW5 testified that it was a sharp object. It could be possible that the knife that the accused used to stab the deceased was the one that caused him the injury. Taking into consideration the entire circumstances of this case, this court finds the accused guilty of the lesser but cognate offence of **Manslaughter** contrary to **Section 202** as read with **Section 205** of the **Penal Code**. It is so ordered.

L. KIMARU

<p style="text-align: justify;" justify;=""> **JUDGE**