



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT KITALE.**

**CRIMINAL CASE NO. 17 OF 2012.**

**REPUBLIC :::PROSECUTOR.**

**VERSUS**

**PATRICK ATEYA:::ACCUSED.**

**J U D G M E N T.**

The accused, **Patrick Ateya**, is charged with murder contrary to section 203 read with section 204 of the penal code, in that on the 23rd April, 2012, at Kapsara village Trans Nzoia County murdered John Chege.

The case for the prosecution arose from the facts that on the 18th April, 2012, a son of the deceased, **Joseph Kihiu (PW1)**, arrived home from work at 11.00 p.m. and slept. In the morning on waking up found that the deceased was injured on his hand. The deceased told him that their neighbour Patrick Ateya (accused), had cut him on the hand.

Similar information was given by the deceased to another neighbour, **Gitahi Wangai (PW5)**, who was further told that the incident occurred in the night and that a panga (machete) had been used by the accused in the assault.

The deceased's brother, **Joseph Ngotho Njoroge (PW2)**, was informed of the assault and went to see the deceased. He noted that the deceased had a serious cut injury on his left hand. He took him to hospital and reported the matter to the police. The deceased was treated and discharged. His condition worsened and on 23rd April, 2012, before he could be returned to hospital, he died in the hands of his son (PW1).

**Dr. Jotham Muhola (PW3)**, conducted a post mortem on the body of the deceased and formed the opinion that the cause of death was severe anaemia due to acute hemorrhage from multiple cut wounds. He produced the necessary post mortem report. (P. Exh. 1).

A clinical officer, **Lawrence Korir (PW4)**, had examined the deceased when he was taken to Kapsara hospital for treatment for injury suffered in an alleged assault incident. In the process, he (PW4) filled and signed the necessary P3 form (P. Exh. 3) showing that the deceased had suffered grievous harm most probably caused by a sharp object such as a panga.

**Cpl. Stephen Weru (PW6)**, received the assault report from the deceased on 18th April, 2012 and issued the P3 form for necessary completion by the doctor. He was informed that the accused was the assailant. He (accused) was apprehended and handed to the police after being injured by members of the public for allegedly resisting arrest. He was taken for treatment before being held in custody for investigations. Later, he was released on a police bond.

He was later charged with the present offence after the deceased passed away.

The defence case was that the accused did not commit the offence and on the material date of the alleged assault he was asleep at his home when he was awakened by his grandson and informed that a stranger had entered the house. His wife was at the time screaming. He found that the stranger was about to enter the house and was at the door pushing it open. He (accused) quickly closed the door and in the process, the stranger's hand was trapped. The stranger however managed to free himself and escape. He (accused) did not see the stranger and on the following morning reported the incident to a neighbour who indicated to him that such incidents were common in the area. As he was about to report to the police, a group of people confronted and assaulted him for reasons he did not know. They alleged that he had injured their relative by slashing his hand. They took him to a village elder and then the police. He complained of having been assaulted and given a P3 form. Later, he was re-arrested and charged with the present offence after the deceased passed away.

From all the foregoing evidence, it was undisputed that the deceased died from injuries suffered on the night of the 17th/18th April, 2012. He was apparently assaulted by a sharp weapon and occasioned grievous harm. The clinical officer (PW4) and the doctor (PW3) confirmed that the injury was mainly on the left arm and that this led to severe anaemia and eventually the death of the deceased.

The issue for determination was basically whether the accused was the person responsible for occasioning the fatal injury upon the deceased. He denied the offence but alluded to a stranger being injured on the hand after being trapped by a closed door while attempting to gain entry into his (accused's) house. He (accused) said that he did not see the stranger but implied that he could have been a thief.

None of the prosecution witnesses was present when the deceased was assaulted. However, before his death at a later stage, he informed his son (PW1), his brother (PW2) and his neighbour (PW5) that he had been injured by the accused who was also his neighbour. He did not tell his son (PW1) the reason for being attacked and injured, neither did he tell his brother (PW2). However, he told the brother (PW2) that he was waylaid and attacked by the accused.

Although none of the aforementioned witnesses (i.e. PW1, PW2 and PW5) saw the deceased being slashed by the accused, the information given to them by the deceased implicating the accused was vital and credible enough for a finding by this court that it was the accused who was responsible for injuring and eventually causing the death of the deceased. His denial of the offence was not genuine. He clearly used a sharp weapon to inflict fatal injury on the deceased but attempted to hide his unlawful act by saying that an intruder was trapped by a door as he attempted to forcibly gain entry into his (accused's) house. He told the investigations officer (PW6) that he slashed the deceased mistaking him for a thief.

The investigations officer indeed confirmed that the area was at the time very insecure due to cattle rustling by Pokot raiders.

The reason behind the attack of the deceased by the accused may not have been known but one thing which was certain was that the accused may not have intended to kill the deceased when he attacked and injured him with a panga. His action was not prompted by malice aforethought even if the deceased had gone into his home with a view to stealing. The offence established and proved against him by the prosecution was that of manslaughter. He is hereby found guilty in respect thereof and is accordingly convicted.

**[Delivered and signed this 5th day of August, 2014.]**

**J.R. KARANJA.**

**JUDGE.**