



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**CRIMINAL CASE NO. 45 OF 2009**

**LESIT, J.**

**REPUBLIC.....PROSECUTOR**

**-VERSUS -**

**JOSEPH MUIMI DOUGLAS.....ACCUSED**

**JUDGMENT**

1. The accused **JOSEPH MUIMI DOUGHLAS** is charged with murder contrary to **Section 203** of the **Penal Code**, the particulars of the offence are as follows:-

**“On the 19<sup>th</sup> day of August 2007, at Kawiru location Igembe District within the Eastern Province murdered JOHN KARUNGU MWINZI.”**

2. The prosecution called four witnesses. The facts of the prosecution case were that on 19<sup>th</sup> August 2007 the accused meet PW1 in the morning near Muriera market. The accused asked PW1 whether he had seen the deceased. He also told her that he would kill the deceased without giving any reason.

3. At about 6 pm the accused was seen chasing the deceased with a Panga by PW4. The deceased ran towards a house and as he held on to the door of a Makuti house, the deceased caught up with him and stabled him on the right chest. The deceased died at the scene. According to Dr. Macharia’s examination report, P. Exhibit I, the deceased died of Cardio respiratory arrest due to damage to the heart and the great vessels of the heart due to penetrating chest injury.

4. The accused gave a sworn statement. He put forward an alibi as his defence. The accused stated that the day in question was a Sunday which was his free day. He stated that he spent the entire day at home from morning to evening. He said that his wife took advantage of him being at home to go to church.

5. The accused stated that PW1 had lied because he had a grudge against him as a result of an incident in 2005 when he, the accused purchasing Miraa from a land owner who had rented the same Miraa plants to PW1. He said that since that incident two years before PW1 was not happy with him. Regarding PW4, the accused stated that he had conspired with PW1 to implicate him with the offence.

6. I have carefully considered the entire evidence adduced by both the prosecution and defence. I have also considered the submissions by the counsel for the accused, Mr Akwalu and the Prosecution Counsel for the State, Mr Mulochi.

7. The accused faces a charge of murder. The offence is created by **Section 203** of the **Penal Code** which stipulates:

***“Any person who of malice afterthought causes death of another person by an unlawful act or omission is guilty of murder.”***

8. Malice aforethought, which is an important ingredient to the offence of murder is defined under **Section 206** of the **Penal Code** as follows:

***“206. Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances -***

***(a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;***

***(b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;***

***(c) an intent to commit a felony;***

***(d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.”***

9. The prosecution has the burden of proof in this case; the standard of proof is beyond any reasonable doubt. The deceased died as a result of stab wound to the left chest. The prosecution has to adduce evidence to establish that the accused stabbed the deceased in the chest and caused his death and that at the time he stabbed the deceased, the accused had formed the necessary intention to cause death or grievous harm to the deceased.

10. The accused has denied causing any harm to the deceased. He has put forward an alibi as his defence. The accused does not bear any burden to prove his defence. In the case of **UGANDA v. SEBYALA & OTHERS [1969] EA 204**, the learned Judge quoted a statement by his lordship the Chief Justice of Tanzania in Criminal Appeal No. 12D 68 of 1969 where his lordship observed:

***“The accused does not have to establish that his alibi is reasonably true. All he has to do is to create doubt as to the strength of the case for the prosecution. When the prosecution case is thin an alibi which is not particularly strong may very well raise doubts.”***

11. The evidence adduced by the prosecution is both direct and circumstantial. The direct evidence is that of PW4 who testified that he saw the accused chasing the deceased with a panga, and that as the deceased tried to open the door to a house nearby, the accused caught up with him and stabbed him in the chest.

12. The incident occurred at 6 pm. It was still during the day. PW4 was a single eye witness of the incident in this case. Regarding the manner in which to test the evidence of a single witness, the Court of Appeal has set principles to apply in several of its cases.

13. In the case of **CLEOPHAS OTIENO WAMUNGA vs. REPUBLIC 1989 e KLR** it was held: -

***“What we have to decide now is whether that evidence was reliable and free from possibility of error so as to find a secure basis for the conviction of the appellant. Evidence of visual identification in criminal cases can bring about miscarriage of justice and it is of vital importance that such evidence is examined carefully to minimize this danger.***

***Whenever the case against a defendant depends wholly or to a great extent on the correctness of***

***one or more identifications of the accused which he alleges to be mistaken the court must warn itself of the special need for caution before convicting the defendant in reliance on the correctness of the identification.”***

14. PW4 testified that he witnessed the incident in question as he sat outside his house in the evening. He stated that he walked up to where the accused was and pleaded with him not to continue stabbing the deceased. PW4 stated that the accused chased him away for a distance because of pleading for the accused. I find that from the circumstances of this case, the fact it was during the day and the accused was not a stranger to PW4 that PW4 had a good opportunity to see the accused person clearly having walked over to where the accused was. He saw him well. He also knew the accused before the incident. PW4 had no grudge against the accused and none were suggested to him during his testimony or cross examination. His demeanour was good and impressed me as an honest witness worthy of belief. I am satisfied beyond any reasonable doubt that the identification of the accused by PW4 was safe and free from any mistake or error.

15. As for PW1 the importance of his evidence is to show that the accused looked for the deceased earlier in the day of incident and that he threatened to kill him. The accused alleged that PW1 lied due to an existing grudge between them over an incident two years earlier. I found that allegation an afterthought for the simple reason the defence did not cross examine PW1 about any pre-existing grudge he may have had against the accused. That issue arose for the first time during accused defence. I do not accept that allegation as true and accordingly I reject it.

16. I find that the prosecution case is overwhelming against the accused. I find that the evidence adduced by the prosecution has proved that the accused looked for the deceased the earlier in the morning of the day incident occurred. The accused had formed the necessary intention to either cause death or grievous harm to the accused. He then stabbed the deceased in the chest, the most vulnerable place, and indeed he died soon after the attack. Clearly the intention of the accused was to cause the deceased death.

17. The accused alibi defence does not shake the prosecution case against the accused. Neither has it created any doubt in the prosecution case. Consequently, I reject the accused defence, find the accused guilty of murder as charged and convict him of the offence accordingly.

**DATED AT MERU THIS 23<sup>RD</sup> DAY OF OCTOBER, 2014.**

**LESIT, J.**

**JUDGE.**