



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 64 OF 2008

REPUBLIC

VERSUS

SAMUEL PARAMWEGA ACCUSED

J U D G M E N T

1. The Accused, **Samuel Paramwega**, jointly with two others already before court were charged with **murder** contrary to **section 203** and **204** of the **Penal Code**.

The particulars of the offence were that on the 12th day of January 2007 at **Makadara Township** of **Athi River Location** in **Machakos District** within the **Eastern Province** jointly murdered **Mpavia Ole Maithi**.

2. The prosecution called a total of eleven (11) witnesses in support of their case.

3. The case for the prosecution is that the body of the deceased, **Mpavia Ole Maithi** was found in a pool of blood at the petrol station where he had worked the previous night as a watchman.

4. One of the witnesses, PW5 **Lemunda Mositet**, who was a housemate to the Accused at the material time, gave out information that linked the Accused to the offence herein. According to the said housemate, the Accused had returned to the house in the morning with a blood stained pair of trousers and shoes. The police officers who received this information arrested the Accused and recovered the blood stained trousers and shoes.

5. The trousers together with the blood samples obtained from the body of the deceased and from the Accused were sent to the Government Chemist for analysis. According to the report from the Government Chemist, the DNA profiles generated from the trousers matched with the blood samples obtained from the deceased.

6. The doctor who carried out a postmortem on the body of the deceased formed the opinion that the cause of death was massive haemorrhage due to severed blood vessels at the neck. The Accused was subsequently charged with the offence herein.

7. In his defence, the Accused gave unsworn evidence. No witnesses were called. The Accused stated that on the material day, the deceased went to his place of work where the Accused worked as a night watchman. That the deceased threatened him with death then whipped out a knife and aimed it at him. That the Accused blocked the knife with his hand and the knife injured the Accused near the elbow and near the knee. That while they were struggling over the knife, they both fell down and the knife stabbed the deceased near the neck. The accused continued with his work until the following day at 6.00 a.m.

when he was arrested. The matter thereafter ended up in court.

8. The evidence of PW2 **Joseph Mpaiya** and PW4 **Selian Ole Mpayia** who are brothers to the deceased establishes the fact of death. According to the two brothers, on 17/1/2007, they were at **Kajiado Hospital Mortuary** where they identified the body of the deceased to the doctor who carried out the postmortem. PW3 **Dr Titus Ndeti** confirmed the cause of death as massive hemorrhage due to cut blood vessels at the neck. The postmortem report was produced as an exhibit.

9. On the question of who the perpetrator of the offence was, it was the evidence of PW5 **Lemunda Mositet**, a housemate to the accused that on the night in question, the Accused who was a watchman left for work at about 6.00 p.m. That the Accused returned to the house at about 3.00 a.m. That the Accused who was drunk left after a few minutes but returned to the house again at about 5.00 a.m., then left again. PW5 further testified that when the Accused returned to the house at about 6.00 a.m. his trousers and shoes had bloodstains. When PW5 heard of the death of the deceased, he went to the scene and saw the body then made a report to the police officers.

10. The evidence of PW5 is corroborated by that of PW10 **Sgt. Samuel Mukiri** who received information from PW5 concerning the bloodstained pair of trousers and shoes. It is the evidence of PW10 that he proceeded to the house of the Accused with other police officers. They arrested the Accused who was drunk and recovered the blood stained pair of trousers from the house of the Accused.

11. The evidence of the recovery of the shoes and the pair of trousers from the Accused is further corroborated by the evidence of PW7 **PC Richard Cheruiyot** and that of the Government Analyst, PW11 **John Kimani Mungai**. It was the evidence of PW7 that he took possession of the recovered blood stained shoes and trousers. He then caused blood samples to be obtained from the Accused and from the body of the deceased. These items were sent under the cover of an exhibit memo form to the Government Chemist for analysis. The report by the Government Analyst (PW11) is that he generated DNA profiles that the blood stains on the pair of trousers and the same matched with the blood samples obtained from the deceased.

12. Although the Accused denied the offence, his evidence that the deceased attacked him with a knife and injured him near the elbow and the knee is not supported by evidence of any injuries. The defence by the Accused that they struggled over the knife and both fell down and the deceased got injured by the knife near the neck is also not convincing. This is because the doctor's evidence and the postmortem report reflected the injuries sustained by the deceased as follows:-

“Has two deep cut wounds on the face and another one on the occipital region, trachea, oesophagus, jugular veins and carotid arteries severed (cut). Face – chest stained with clotted blood. Both eye balls removed.”

13. A fall on the knife would not have caused such injuries. The kind of injuries sustained by the deceased are testimony to a deliberate effort to cause his death. Malice aforethought was therefore established. Any intention to cause grievous harm to any person is evidence of malice aforethought (See **section 206** of the **Penal Code**.)

14. I find the prosecution case proved beyond reasonable doubts. Consequently, the Accused is guilty as charged and convicted accordingly.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 27th day of November 2014.

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