



REPUBLIC OF KENYA

High Court at Embu

Criminal Case 6 of 2008

REPUBLIC PROSECUTOR

VERSUS

JAMES MURIMI KARIUKI ACCUSED

J U D G M E N T

JAMES MURIMI KARIUKI hereinafter referred to as the accused stands charged with the offence of Murder contrary to section 203 as read with section 204 of the Penal Code.

The particulars being that; ***JAMES MURIMI KARIUKI on the 21st day of June 2008, at Ishiara market, Evurore location in Mbeere District within Eastern Province murdered JOSPHAT NJERU NGARI.***

The prosecution did call a total of ten (10) witnesses. The Prosecution case is that on 21/6/2008 the accused and deceased had been seen together at Ishiara market. They went together to the butchery of P.W.1 to keep the meat they had in a paper bag in P.W.1's fridge. They appeared to have changed their mind and left with the meat. After a while there were screams and the accused and deceased were seen holding each other and the deceased was bleeding. Upon releasing each other the accused was left holding a knife which was blood stained. The deceased was rushed to the hospital by P.W.7. He died while undergoing treatment. The accused took himself and the murder weapon to the police station. The knife and shirt which the deceased was wearing were taken to the Government chemist together with the deceased's blood sample. The blood on the knife and shirt was found to match the DNA profile generated from the deceased's blood sample (EXB 4). The accused was found to be mentally fit to stand trial (EXB 2).

The cause of death was found to have been massive haemorrhage secondary to stab wounds to the left intercostal vessels, colonic mesentery and the colon.

When placed on his defence the accused gave a sworn defence denying any involvement in the commission of this offence. He remembered visiting a patient in hospital on 21/6/2008 at 3pm and returned home. On his way he passed through the back of a drinking place and took 2 cups of changaa. There were people at the front drinking. As they wound up the seller advised them to run away as the police were coming. As he went out he was arrested by a police officer and since he was not able to bribe him with shs.200/= he was taken to the cells at Siakago then Ishiara. He was then charged.

In cross-examination he stated that the patient he had gone to see had actually died.

This is the case before Court for determination. The accused is facing a charge of Murder contrary to section 203 as read with section 204 of the Penal Code.

The fact of death is not denied. P.W.4 and P.W.5 identified the body of the deceased to the doctor for Post Mortem. The doctor who did the Post Mortem established the cause of death as massive haemorrhage as a result of stab wounds to the intercostal vessels, colonic mesentery and the colon. This was not therefore a natural death.

Having established the fact of death and its cause I now move to the next issue as to who caused this death.

P.W.2 was at Ishiara market on this day. He used to roast meat at the said market. He saw the accused and deceased come there to carry meat. The deceased then packed his meat in a paper bag. P.W.2 who runs a butchery at Ishiara market was in his butchery on this day. While there the accused and deceased came there with a paper bag. The deceased told the accused that he wanted to keep the meat in the fridge. They carried the meat and left. Noises/screams were later heard. Both P.W.1 and P.W.2 heard these noises. P.W.1 says the noise was from outside his kitchen. When he checked he saw the deceased bleeding and the accused was holding a knife. P.W.2 also responded to the screams and went out. He found the deceased and accused standing while holding each other. The deceased was bleeding from the left temple. When they released each other the accused was left holding a knife. The accused was not bleeding. P.W.1 and P.W.2 clearly stated what they witnessed. None of them states that he witnessed the actual stabbing.

They are however consistent that the accused and deceased had been hanging together upto the time the deceased was seen bleeding. They have also stated that at the scene of the wounding the accused had been left holding the blood stained knife.

Further P.W.8 stated that the accused had taken himself plus the blood stained knife to the police station on the same day of the murder. P.W.8 found him in the cells on 22/6/2008 at 8am. The government analyst (P.W.10) found the blood on the knife and the shirt the deceased was wearing to match that of the DNA profile generated from the deceased's blood sample. The murder knife had been well identified by P.W.1 who stated that he saw it very well.

The accused states that he knows nothing about this incident. And that he was only arrested and charged because he had been found drinking and was not able to pay the police officer shs.200/= to buy his freedom. He wants this Court to believe that had he paid the police officer ksh.200/= he could never have been arrested and charged. This cannot be true in light of the strong evidence of P.W.1 and P.W.2. The accused has even denied knowing the deceased. The two had been seen hanging together at the Ishiara market. His is a mere denial of the truth. There is no way he could have been hanging out with a stranger.

My finding therefore is that the accused is the person who stabbed the deceased causing him fatal injuries. The next issue for determination is whether malice aforethought has been established. Was there any intention by the accused to kill the deceased?

The Penal Code defines malice aforethought under section 206 (a) and (b) as follows;

- 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.***

The post Mortem report confirms the extent of the injury. The deceased had stab wound to the left intercostal vessels, colonic, mesentery and colon. There was a fracture of the left 12th rib. As a result of the stab wound there was **massive haemorrhage**. The end result of this was death. The accused knew or ought to have known that such attack would lead to death or grievous injury. There is no evidence that the

deceased attacked him or injured him at all. Therefore the excessive force used against the deceased by the accused was uncalled for.

After considering all the evidence on record including the defence of the accused I do find that the charge of Murder has been proved against the accused. For my part I find him guilty and convict him of Murder as charged.

DATED AND DELIVERED AT EMBU THIS 13TH DAY OF FEBRUARY 2013.

**H.I. ONG'UDI
J U D G E**

In the presence of;

H.I. Ongundi – Judge

M/s Macharia for State

Ms Nyaga for Githinji for accused