



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

HCR NO. 45 OF 2008

LESIT, J

REPUBLIC.....PROSECUTOR

V E R S U S

CYPRIAN MURUNGI ITIRIKIA.....ACCUSED

JUDGMENT.

1. The accused person was charged with murder contrary to section 203 of the Penal Code. It is alleged on 15th June 2008 at Kaulune Village at Antuambui Location jointly with others not before the court murdered Kennedy Githinji M’Itirikia.
2. The prosecution called a total of 6 witnesses. The facts of the prosecution case were that Joel Munyi, PW1 had employed the accused person to guard his miraa plants on a shamba which he had rented from one M’Kobia M’Aboru. On the 15th June, 2008 PW1 received a call from the accused informing him that he had caught a miraa thief. Upon receiving that information PW1 called one Joseph Mungathia who was area Sub-Chief then but who has since died. PW1 together with Mungathia proceeded to the shamba where they found the body of the deceased with a broken stick next to him and the accused person holding a knife and standing next to him. The police were called in and eventually the accused was arrested and charged.
3. The accused person in his defence admitted that he was employed by Teacher Munyi PW1 to guard his miraa shamba which was on a land belonging to M’Kobia M’Aboru. He said that he arrived at the shamba on the material day in the morning being a Sunday, at about 7 am. He said he found the deceased busy plucking miraa and on confronting him to stop what he was doing, the deceased pulled out a panga and threatened him. The accused stated that he screamed and those who went to his rescue were Salesio M’Itirikia PW5, one Gitonga Kangu and another person. He said that the 3 of them helped him to take the deceased to PW1 who in turn called his brother Moses and Mungathia the area Sub-Chief. He said that he left the deceased in their hands but before leaving he saw Mungathia beating the deceased with a rungu. He said that the next time he saw the deceased he was already dead.
4. The charge facing the accused is that of murder contrary to section 203 of the Penal Code. The prosecution must adduce evidence to establish that the accused person while having an intention to cause death or grievous harm unlawfully attack the deceased inflicting injuries as a result of which he succumbed and died. Malice aforethought is an important ingredient to the charge and the circumstances which constitute the same are set out in section 206 of the Penal Code in the following terms:

“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**
- b. **death of or to do grievous harm to any person, whether that person is the person actually killed or not;**
- c. **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;**
- d. ...
- (e) ...”

5. I have carefully considered the evidence adduced by the prosecution and the defence. The prosecution has adduced medical evidence through PW2 Dr. Murungi Ithae who conducted the post mortem on the body of the deceased on the 16th June, 2008 one day after the death. He said that the body had multiple bruises and swelling of the head abdomen, hands and legs with bleeding through the ear and the nose. Internally there was blood in the abdominal cavity with a ruptured spleen and intracranial hemorrhage in the head. The doctor formed the opinion that the cause of death was cardiac arrest due to intracranial hemorrhage and internal bleeding in the abdomen due to blunt object injuries.
6. There were two eye witnesses of this incident PW4 Beatrice Kanana and PW5 Salesio Itirikia. The evidence of PW4 was that she was coming from church that Sunday morning when she met the accused one Moses M’Rimberia and Mungathia M’Asiolo who were accompanied by the deceased. PW4 testified that the deceased had both his hands tied with ropes and he was being beaten with rungu. She identified one Rungu P.exhibit 2 as the one Mungathia was having. PW4 stated that when she asked the group why the severe beating was informed that the deceased had stolen miraa and that they would call the owner of the shamba to call the police.
7. PW 5 on his part said that he was outside his house on the Sunday morning when he saw six youths leading the deceased whose hands were tied. He said that when that group reached outside his land the group started beating the deceased and when he inquired why they were beating him he was told that the accused had stolen miraa from the shamba guarded by the accused. He said that among the six youths who were with the deceased was the accused Moses M’Rimberia and Mungathia. PW5 testified that the deceased asked for water which his wife gave him together with tea. That despite advising the six youths to take the deceased to the police they went towards the opposite direction.
8. PW5 said that at about 1 pm he saw PW3 a brother of the deceased and informed him about the incident. PW5 described the weapons the six youths he saw armed with and said that they were thin stick, or whips or canes. He also said that of all the six youth he only saw Mungathia hit the deceased.
9. The Prosecution witnesses were not consistent in their evidence and I will demonstrate this in their evidence.
10. The sequence of the events leading to the deceased death appear contradictory in the evidence of the eye witnesses accounts. PW1, the employer of the accused said that the accused called him with regard to deceased arrest. He then describes how he went to the scene in the company of the sub-area Mungathia. His evidence was that he found the deceased dead and with accused standing next to him with a knife in hand.
11. PW4 on her part started at around Ilalu she was leaving church when she came across the accused, one Moses M’rimberia, one Mungathia Asiolo and the deceased. The four men were inside the

- farm of M’Kobia M’Aboro. She said that Mungathia was beating the deceased with a rungu which she identified in court as P.exh2.
- 12.PW5 on his part said that six youth stopped outside his land and started beating the deceased. He gave names of some of them as Moses M’Rimberia, Mungathia and accused.
 - 13.PW4 and 5’s evidence is inconsistent with that of the accused, Moses and Mungathia who went to the scene with him. Yet PW4 and 5 were categorical that Mungathia was the only one seen by the two, separately, hitting the deceased. So that the evidence of PW1 that by the time he and Mungathia went to where the accused and deceased were, the deceased was already dead.
 - 14.Given the contradiction in the evidence, either PW1 or PW4 are lying because there is no way Mungathia could have been seen beating the deceased by PW4 and 5 and at the same time could have arrived at the scene where accused was after the deceased had died. The inconsistency in the evidence is irreconcilable.
 - 15.There were other inconsistencies in the evidence of the prosecution. PW4 said that she saw accused Moses Mungathia with rungu. PW5 said that Moses, Mungathia, accused and the three others were armed with whips. PW1 on the other hand said he met only accused was holding a knife. I noted that PW4 in her statement to police had stated that only one person was armed Mungathia.
 - 16.The doctors evidence shows that the cause of death were blunt object injuries and internal bleeding. None of these injuries could have been caused by a sharp object. Rungu seen by PW4 and whips seen by PW5 could cause the injuries found on the deceased.
 - 17.The accused defence mentioned that when he took the deceased to PW1, pw1 called Moses his brother and Mungathia the sub Area. The Accused said that before having them with death, Mungathia had started beating the deceased with a rungu.
 - 18.Having analysed the entire evidence it is difficult to know what really happened, most importantly its is difficult to know who caused the deceased death. The burden lay on the prosecution to prove its case against accused.
 - 19.After considering the evidence adduced in this case, I find that the prosecution case was full of contradictions and inconsistencies that went to the very substance of the charge. I find that the said disparities create a doubt in the court’s mind whether the accused committed this offence. I find that the case was not proved to the required standard. I accordingly give the accused the benefit of doubt and acquit him for this offence.
 - 20.Those are my orders.

DATED SIGNED AND DELIVERED AT MERU THIS 17TH DAY OF OCTOBER, 2013.

J. LESIIT

JUDGE