



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT EMBU**  
**CRIMINAL CASE 16 OF 2009**

**REPUBLIC ..... PROSECUTION**  
**VERSUS**  
**ANTHONY NDEGWA NGARI..... ACCUSED**

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

ANTHONY NDEGWA is charged with the offence of Murder contrary to Section 203 a read with Section 204 of the Penal Code. The particulars are that the accused on 18<sup>th</sup> July 2009 at Karumandi Trading Centre, Karumandi Location in Kirinyaga District within Central province murdered DAVID MUNENE TERESIO.

The Prosecution case is that on 18<sup>th</sup> July 2009 8 p.m. PW2 and the deceased were walking from the stage at Karumandi. They met the accused outside the bar. Accused is said t have just come and stabbed the deceased with a Somali sword without uttering a word. PW2 had known the accused for 5 years and there was moonlight and security lights on from the bar and Ngomongo shop.

The deceased was stabbed on the neck. PW2 screamed and was joined by PW3 who also screamed. People soon gathered and the Police were called. They managed to get a motor vehicle which took him to Kianyaga Hospital from where they were referred to Kerugoya District Hospital but he was pronounced dead on arrival.

The evidence from the doctor who did the post mortem (PW1) is that the deceased had a deep cut wound on the left side of the neck with severed neck muscles measuring 5 cm. There was an exit resulting from the same injury on the right measuring 3 cm. There was a severed trachea at the level of the thyroid cartilage. There were also severe left cuts on the carotid artenus. ***The cause of death was severe neck injuries with severed internal and external carotid artenus and severed trachea.*** The post mortem was attended by PW5, PW13.

When PW3 responded to the screams and went to the scene she found PW2 trying to lift a person who was groaning and shouting. PW2 told her it was the accused who had stabbed the deceased. PW4 was on 18/7/2009 about 8.30 p.m. at Karumandi market when he saw somebody running. This was between buildings and there was moonlight and light from electricity. The person running was wearing a white shirt and he recognised him as the accused who he had known for over 10 years. The accused was

carrying a knife. PW4 then went to the scene and found the deceased lying down.

PW6 the Government Analyst testified that the blood on the sword (EXB1) matched that of the deceased which had been brought to him as a sample. PW7 (an assistant chief) and PC Waburi (PW8) and Cpl. Kathuri acted when they received the report of the murder and they went to look for the accused at his house. When they reached there the accused refused to open and so the door was forced open. They arrested him and upon a search being carried out they recovered a log knife between his bed and mattress, it had blood on it. Police officers from Kianyaga re-arrested him.

The accused was assessed by Dr. Thuo (PW11) and found to be mentally fit to stand trial. The accused in his sworn defence testified that on 18/7/2009 3 p.m. he went to Karumandi to purchase fertilizer which he did and he sent it to his father's home. He went to 3 different bars for a drink that night and by 9.20 p.m. he was already drunk when Justus Njagi Gachoki (PW7) confronted him forcing him to pay a bill which was not his. They quarreled and he thereafter went home. He denied knowing the deceased nor carrying any sword that night. In paradise bar at the back were drunkards fighting. He was home between 8 p.m. -830 p.m.

People came to his house that night and beat him. Nothing was recovered from his house. He further stated that PW7 had a grudge with him for refusing to allow his bother to sell him (PW7) land. And he had sworn to teach him a lesson. In cross examination he said he quarreled with PW7 in Booster Bar where there were 20-25 people. One of them being Wanjiku.

In his submissions Mr. Momanyi for the accused stated that the Prosecution had not proved its case. *Mens rea* was not proved as there was no quarrel between them. The finding of the Somali sword he says was questionable and that PW4, PW7 and PW8 should not be believed. Lastly the accused was injured. Could the blood on the knife be that of the accused?

Ms. Matiru for the State submitted that the Prosecution had proved its case. There was light and the blood on the knife was found to be matching that of the deceased. This is the case before the Court for determination. The main ingredients to be proved in a murder case are the *mens rea* (intention) and the *actus reus* (act itself). There is no dispute that the deceased died as a result of a severed trachea and carotid arteries.

The time of offence was 8 p.m. The scene was at Karumandi town//trading centre about 5 meters from the bar operated by PW12. PW2, PW3, PW4 told the Court there was moonlight and there was electricity light at the scene which was at Karumandi Market. PW2 was walking with the deceased when they met the accused who stabbed the deceased on the neck.

PW2 screamed and the accused ran away. PW3 was headed to the bar when she heard cries and saw PW2 trying to lift up somebody. She was the first person to respond to the screams. He asked PW2 what had happened and he told her it was the accused who had stabbed the deceased. She screamed and people came.

PW4 was at the market when he saw somebody running and was carrying a knife. This was between buildings but he was able to see because of the moonlight and electricity light. He identified the person running as the accused. He has known accused for over 10 years. He said he saw him well and he was carrying a knife. PW4 then went to where people had gathered and saw the deceased lying on the ground with an injury on the neck.

PW2 said during this incident the accused was wearing a white shirt with stripes. PW4 who saw the accused about 7 meters away said the latter was wearing a white shirt. He was running away from the crowd while carrying a knife. From his own defence the accused does not deny having been at Karumandi market at the time of incident. In fact he says he moved into 3 different bars that evening. He however does not say what he was looking for, as he moved in these 3 bars in a single night!

It is therefore true when PW2 and PW4 say the accused was at the market on the material date and

time. Word went round very fast of what had happened. The name of the accused as the person who had done this was immediately given to the administration and the Police who swung into action. They went straight to the accused's house, and found him and recovered the sword (EXB2).

The accused in his defence states that he was at Booster Bar at 9.20 p.m. when PW7 who already had a grudge with him ordered him to pay a bill which was not his. They then quarreled. And that it was PW7 who organized for his arrest. There were customers there including Wanjiku. None of these people came to support this piece of evidence. Of interest is that PW7 testified and was cross examined by the accused's counsel.

Nowhere was he asked about these allegations by the accused person. Had it been true counsel would not have failed to raise the said issues with him (PW7) for him to deny or admit. I find this to be an afterthought. PW7 was at his home when PW8 and PW14 called him and told him of the incident. They then linked up and started their work. There is no evidence that he ever met the accused at Booster bar that night.

I do note that the witnesses have referred to a knife and others have referred to it as a Somali sword. The Court saw it and described it as a short sword with a black handle (EXB2). ALL the witnesses who referred to it identified it as the knife/sword they were referring to. The accused was arrested in less than two hours of the incident. PW7 and PW8 are the ones who recovered the sword (EXB2) between the bed and mattress of the accused. The knife had blood stains on it. PW13 (PC Mwalavu) dispatched the sword to the Government Chemist for analysis. PW1 confirmed that a specimen of blood was taken from the body of the deceased.

The Government Analyst (PW6) stated that he received 3 items;-

**1. Blood sample of the accused**

**2. Blood sample of the deceased**

**3. A sword which was moderately stained with human blood of "Group B" while that of the deceased was found to be of "Group B".**

The accused's blood group was "A".

His opinion was that the blood stains on the sword matched in group with the blood sample of the deceased. Those blood stains would have originated from the deceased after injury he said. Contrary to counsel's submission there is no way the blood stains of "Group B" found on the sword would belong to the accused whose blood group was "Group A".

The accused has denied having been found in possession of the sword EXB2. He however reckons that he was drunk even as he left Karumandi and even at his time of arrest.

There is no reason why PW2, PW4, PW6, PW7, PW8 and the others would gang up to lie up against him. The evidence of PW2 about the stabbing, PW4 about the accused person's running away from the crowd with a sword; the finding of a blood stained sword by PW7 and PW8 under the accused's mattress and finally the matching of the blood stains on the sword (found under accused's mattress) to that of the deceased squarely places the accused at the locus quo and points to none other than the accused as the person who killed the deceased.

He had no reason to kill him. He came direct to him and stabbed him severing his trachea and other parts of the neck. His motive was to kill him. It was not an accident. I find that malice aforethought as defined in Section 206 of the Penal Code has been established. For my part I find the accused guilty of the offence of murder and proceed to convict him under

Section 322(2) of the Criminal Procedure Code.

**DELIVERED, SIGNED AND DATED AT EMBU THIS 26<sup>TH</sup> DAY OF JUNE 2012.**

**H.I. ONG'UDI**

**JUDGE**

**In the presence of:-**

**Ms. Macharia for State**

**Accused present in person**

**Mr. Momanyi for accused**