

REPUBLIC OF KENYA

High Court at Nyeri

Criminal Case 64 of 2008

REPUBLIC.....PROSECUTOR

-versus-

JOSEPH MURIUKI MWAI.....ACCUSED

J U D G M E N T

Joseph Muriuki Mwai, is before this Court on the information of the the Hon. Attorney General dated 13th November 2008, facing a charge of **Murder** contrary to the **Provisions of Section 203** as read with **Section 204 of the Penal Code**. It is alleged that on 28th October 2008 at Kirima Village in Kirinyaga District within Central Province, he Murdered Amos Warui Ruriga.

The Prosecution's case is supported by the evidence of eight (8) witnesses James Wanjohi Chewa (P.W.1) told this Court that on 28th October 2008, he together with Amos Warui Ruriga, (deceased) and others went to harvest rice and at the end of the exercise the deceased was paid Ksh.500/=. P.W.1 said he later heard Joseph Muriuki Mwai (accused) complain that the deceased had not repaid him a debt of Ksh.95/=. He saw the deceased and the accused quarrel when they were taking a drink at the home of one Mama Julius. P.W.1 said he saw the accused punch the deceased before they were separated and told to leave that home. Josphat Murigi Gesangi (P.W.4) stated that on 28th October 2008 he went to sell traditional alcohol on behalf of Mama Julius at her home. P.W.4 said that at 2.00 p.m. the deceased in company of three other people came to ask for loose change for Ksh.500/=. P.W.4 gave the deceased the change and thereafter he saw the quartet share the money. Shortly, P.W.4 said, the accused arrive and heard him demand from the deceased to be paid Ksh.95/=. The deceased declined to pay the accused. A quarrel ensued leading to a fight between them. The duo were separated. P.W.4 said he saw the accused ride away on a bicycle. He was close us followed by the deceased who walked on foot. Julius Ngigi Mureithi (P.W.2) was among the first people to visit the scene where the deceased was assaulted. At the scene he found the deceased lying down and in great pain. It is the evidence of P.W.2 that the deceased told him that the accused had assaulted him. P.W.2 with others made arrangements to have the deceased's relatives informed. The deceased was taken to hospital the next day where he died while undergoing treatment. Alex Githinji (P.W.5) went to see the deceased and that is when the deceased told him that he had been attacked by the accused when he failed to pay him his debt of Ksh.95/-. Dr. Paul Mbalu (P.W.7) performed a Postmortem on the deceased's body and came to the conclusion that the deceased died as a result of head injury, asphyxia and respiratory failure.

When the accused was placed on his defence, he denied the offence. He told this Court that on 28th October 2008 at 10.00 A.M. the deceased visited his house to borrow Ksh.150/=. The accused said the deceased promised to repay the debt at 1.00 P.M. The accused alleged that he met with the deceased at the home of Mama Julius where they went to have a drink. It is the evidence of the accused that when he demanded to be paid his debt, the deceased completely denied owing him any money. The accused was then prompted to take away the deceased's bicycle with a view of forcing him to repay his debt. The deceased followed the accused demanding to be given back his bicycle. A quarrel ensued. The accused said there was no fight which took place. The deceased is said to have been given back his bicycle when he repaid the debt. It is the evidence of the accused that they were drunk when they parted ways with the deceased at midnight.

At the close of evidence, Learned Counsels from both sides made final submissions. It is the submission of Mr. Kimani Njuguna, Learned Advocate for the Accused that the ingredients of Murder had not been established and that the cause of death was not conclusive. The Learned Defence Advocate was of the view that there was no proof beyond reasonable doubt. Miss Ngalyuka, Learned Senior State

Counsel was of the view that the Prosecution had established its case beyond reasonable doubt.

I have considered the evidence presented before this Court plus the able submissions of Learned Counsels. It is trite law that two elements must be established in order to prove the offence of Murder:

First, there must be proof of Malice aforethought and Secondly, *actus reus* must exist. There is no doubt that the deceased did not die out of natural causes but was killed. The evidence of P.W.1 and P.W.4 clearly show that the accused attacked the deceased over some unpaid debt. The accused in his evidence confirm that he had a quarrel with the deceased on the fateful day over some unpaid debt which the deceased owed him. Though the accused denied ever assaulting the deceased, I am convinced by the evidence of P.W.1 and P.W.4 that the accused attacked the deceased. I am satisfied that as a result of the accused's attacks, the deceased sustained serious injuries which later on led to his death. In the circumstances, I am convinced the element of *actus reus* was established. The next question is whether the ingredient of Malice aforethought was proved. The evidence presented does not attach any Malice aforethought on the accused's part. The deceased and the accused had a cordial relationship which was spoilt by the failure on the part of the deceased to settle a debt advanced to him by the accused. The fight between the duo was spontaneous and was worsened by the consumption of alcohol. In my view, there was no premedated plan on the part of the accused to kill or cause grievous harm on the part of the deceased. After a careful consideration of the evidence and the submissions, I find that the offence of **Murder** has not been proved. The offence which has been established by the evidence is the lesser offence of **Manslaughter Contrary to Section 202 (1)** as read with **Section 205** of the **Penal Code**. Pursuant to the **Provisions** of **Section 179(2)** of the **Criminal Procedure Code**, I convict the accused for the offence of **Manslaughter** under **Section 202(1)** of the **Penal Code** as read with **Section 205** of the **Penal Code**.

Dated, signed and delivered this 18th day of October 2012.

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J. K. SERGON

JUDGE