



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Criminal Case 44 of 2008

REPUBLIC..... PROSECUTOR

VERSUS

NICHOLAS MUTURI CHIANDE..... ACCUSED

J U D G M E N T

The accused, **NICHOLAS MUTURI CHIANDE**, was charged with the offence of **Murder contrary to section 203 as read with section 204 of the Penal Code**. The particulars of the offence were that on 2nd May 2008, at Kibera Laini Saba slums in Nairobi, the accused murdered **MULE MULI**.

The prosecution called eight (8) witnesses. Thereafter, when the accused was put to his defence, he gave unsworn testimony. The accused did not call any other witness.

PW 1, DAMARIS NZEMBI MASITU, lived next-door to the deceased. On 2nd May 2008, at about 7.00a.m., **PW 1** heard a voice calling out the name of the deceased. **PW 1** identified the voice of the person who was calling out as that of the person who they used to call "Mapeyi".

PW 1 testified that Mapeyi was a friend of the deceased. And when the deceased heard his name being called out, he asked Mapeyi to enter the house.

Once Mapeyi was inside the house, **PW 1** heard him ask the deceased for his mobile phone. **PW 1** did not hear the response of the deceased. However, shortly thereafter, **PW 1** heard Mapeyi and the deceased arguing loudly.

The deceased then called out loudly, asking for help; he said that Mapeyi was holding a knife.

PW 1 immediately opened her door. Outside her house, she saw Mapeyi holding a bloody knife, as he was passing by **PW 1's** door.

PW 1 rushed back into her house and closed the door. At that point, the accused, who **PW 1** identified as the person they used to call by the name Mapeyi, called **PW 1** by her name and asked her what she was looking at. It is that question that prompted **PW 1** to rush back into her house.

PW 1 remained inside her house until she heard the voices of other neighbours talking outside.

PW 1 accompanied some of the neighbours into the house of the deceased. They found him on the floor. There was blood on the chest of the deceased.

Later, the deceased was ferried to the hospital, but he died whilst still on the way.

It was the evidence of **PW 1** that she got to know the voice of the accused very well because the accused used to visit the deceased regularly. During that period, **PW 1** was spending most of her day-time at home. She used to speak with the deceased and the accused.

After the accused had entered the house of the deceased, **PW 1** heard only those 2 men arguing.

PW 2, JOHN MULI, is the father of the deceased. He identified the body of his late son, for purposes of the post-mortem examination.

PW 3, STEPHEN MWANGANGI MULU, was a brother of the deceased. His role in the case was the identification of the body of the deceased. He did so at the City Mortuary.

PW 4, MUTINDA MULI, was 14 years old. He gave unsworn testimony, after it transpired that he did not understand the meaning of an oath. However, he was duly cross-examined by the accused.

PW 4 is a son of the deceased. On 2nd May 2008 he was staying in the same house with his father. He was visiting his father, as it was during the school holidays.

The house they lived in was a single room.

Whilst his father was still asleep, **PW 4** heard a knock on the door. He got up from where he had been seated and opened the door.

The accused came into the house, and woke up the deceased. Once the deceased was awake, the accused asked him about money.

As the accused was talking to the deceased, he was holding something in his hand. But **PW 4** did not identify the object.

When the discussion between the accused and the deceased developed into an argument, **PW 4** went outside the house. He stopped at a place where he could no longer hear the arguments nor see their house.

After a short while, **PW 4** returned to the house. He saw the accused, who was holding a knife. According to **PW 4**, the accused was not hiding the said knife. The witness saw blood on the knife.

The accused told **PW 4** to go and tell the deceased that he would kill him.

When **PW 4** reached their house, he found his father on the ground. The injury on the chest of the deceased was bleeding.

When **PW 4** talked to his father, he got no response.

PW 4 rushed out and called for help from the neighbour. The said neighbour accompanied **PW 4** back to the deceased's house.

As **PW 4** was still standing at the door, the accused returned: he was holding the knife in his hand.

The accused dared anybody who felt courageous enough to come out of his or her house.

Later, **PW 4** learnt that his father had died from a stab wound.

About 14 days after the incident, **PW 4** was called to the Kilimani Police Station, where he picked out the accused at an Identification Parade.

During cross-examination **PW 4** said that he stayed outside the house for about 20 minutes before returning.

As he was returning to the house, he saw the accused holding a bloody knife. The said knife was not one of those that belonged to the deceased.

When asked how he was able to identify the accused at the parade, **PW 4** said that it was because he had seen the accused clearly.

PW 5, PC JOSEPH KARIUKI, was based at Kilimani Police Station. On 30th May 2008 he was informed by Chief Inspector Rotich that a suspect had been traced at Kibera Laini Saba. The said suspect had earlier stabbed the deceased in this case.

The information concerning the suspect had been provided by the Chief of Kibera. Therefore **PW 5** went with 2 other officers to the Chief's Camp.

The chief directed one of the men whom he had assigned to keep track of the accused, to take the police officers to the place where they would find the accused.

PW 5 and the other police officers were led to a pub, where they found the accused taking refreshments. The officers arrested the accused and escorted him to the police station.

PW 6, CHIEF INSPECTOR STEPHEN GICHIRI, was based at the Kilimani Police Station at the material time. He was the Deputy Officer Commanding Police Station.

On 16th May 2008 he conducted an Identification Parade. The suspect was the accused herein, whilst **PW 4** was the witness.

The witness picked out the accused from the parade. Thereafter, the suspect signed the parade form, indicating his satisfaction with the manner in which the parade had been conducted.

PW 7, DR. FRANCIS MAINA NDIANGUI, is a pathologist. On 16th May 2008 he conducted a post-mortem examination on the body of the deceased.

He noted one penetrating stab wound on the chest. That wound lacerated the heart and the left diaphragm.

A second stab wound was over the 3rd rib on the left side. That particular stab wound was not deep.

After exhaustive examination, **PW 7** concluded that the cause of death was the internal bleeding due to the lacerated heart.

PW 7 also said that the deep penetrating stab wound was caused by a sharp object, most likely a knife.

PW 8, CPL WILLIAM MACHARIA, was the Investigating officer. He visited the scene of crime and interviewed neighbours, as well as **PW 4**. The investigations led **PW 8** to conclude that it is the accused who murdered that deceased. Therefore, he preferred charges against the accused.

After the prosecution closed its case, the accused was found to have a case to answer. He then gave

an unsworn testimony.

He talked about the fact that he was arrested on 13th May 2008, from Kaviria Bar, within Kibera Laini Saba. He was told that he was being arrested for being drunk and disorderly. But later, he was charged with a murder that he knew nothing about.

The accused confirmed that he was picked out of an Identification parade.

Nonetheless, the accused denied committing the offence.

Having evaluated all the evidence on record, together with the respective submissions, I now make the following findings;

The deceased was stabbed in his chest. One of the 2 stab wounds was so deep that it penetrated upto the heart. The lacerations to the heart and to the left diaphragm of the deceased caused massive bleeding into his chest, resulting in his death.

The stab wounds were most probably caused by a knife.

At the time of the incident, **PW 4** had left only the father (now deceased) and the accused inside the one-roomed house.

And when **PW 4** was returning to the house, he met the accused holding a bloody knife.

Although the accused walked away, he soon returned whilst still holding the knife. He then dared anyone who perceived themselves as courageous, to come out from their house.

In his defence, the accused did not tell the court where he was at the time of the incident.

Of course, this court is well aware that the burden of proof in criminal cases always vests in the prosecution. It is the onus of the prosecution to prove beyond any reasonable doubt that the accused person had committed the offence.

An accused person is entitled to remain absolutely silent, if he should choose to do so. That would still entitle him to an acquittal unless the prosecution had proved the case against him.

In this case, **PW 1** was very familiar with the voice of both the accused and the deceased. She described them as very close friends.

She was sure that it is the accused who arrived at the house of the deceased on that fateful morning. **PW 1** heard the accused call out the name of the deceased.

Later, **PW 1** encountered the accused as he was leaving from the residence of the deceased. Therefore, had there been any doubt about the identity of the person whose voice **PW 1** had heard earlier, the same was removed.

Furthermore, **PW 4** also picked out the accused at an Identification Parade. That corroborates the evidence of **PW 1**, regarding the identity of the person who was at the residence of the deceased that morning.

There is no witness who actually saw the accused stab the deceased. In effect all the evidence is circumstantial. Nonetheless, the said evidence points at the accused, (and only at him), as the person who used the knife to stab the deceased. After using it, he displayed it openly. He even dared the neighbours of the deceased to come out of their houses, if they were sufficiently courageous.

I have no doubt in my mind that it is the accused who stabbed the deceased.

He applied so much force when doing so, that the knife penetrated the chest of the deceased, lacerating the heart.

Thus even though the accused had been a very good friend of the deceased, and even though he used to visit him regularly, the accused must be deemed to have intended to kill the deceased. In the alternative, the accused wished to cause grievous harm to the accused.

In either scenario, that means that the accused had malice aforethought, pursuant to **section 206 of the Penal Code**.

He and the deceased had been good friends. But on the day in question, he visited the deceased whilst already armed with a knife. He demanded either his mobile phone or money from the deceased.

The interaction degenerated into an argument. And the accused then used the knife, which he had carried, to stab the deceased. He used so much force that the knife penetrated deep into the chest of the deceased, lacerating the heart and the diaphragm.

He killed the deceased. And because he had malice aforethought, I find that the prosecution has proved beyond any reasonable doubt that the accused is guilty of the murder of MULE MULI. Accordingly, I now find the accused guilty, and therefore I convict him for the offence of Murder.

Dated, Signed and Delivered at Nairobi this 8th day of November, 2012.

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FRED A. OCHIENG

JUDGE