



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**CRIMINAL CASE NO.66 OF 2003**

**REPUBLIC ..... PROSECUTOR**

**V E R S U S**

**DANIEL LUTTA .....ACCUSED**

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

1. Daniel Lutta was charged with the offence of murder contrary to **section 203** as read with **section 204** of the Penal Code. It was alleged that on 18.3.2003 at Esiakhulo village, Makunga sub-location, East Wanga Location, in Butere-Mumias District within the Western Province, he murdered one, **Jared Juma**. He denied the charge and the evidence tendered in court was as follows;

2. According to **PW1, Wilfred Muyula Makomere** and **PW3, Julius Opananda Chuma**, on 17.1.2003, they had been with the deceased the whole afternoon and having visited one Osure, they walked back home together. That at 7 p.m. they met the accused person whom they knew very well and he had a panga with him. After they had passed him and the deceased was a little behind, suddenly PW1 heard a scream and when he turned back, he saw the deceased on the ground and the accused person standing over him. That when he approached the two and tried to assist the deceased, the accused person slashed him on the forehead and he held on to the accused and called out to PW3 to assist him. He lost consciousness because of the heavy loss of blood and according to PW3 when he saw what had happened, he started screaming and a crowd formed and some of the people who came to the scene helped to take PW1 to hospital and PW3 remained with the deceased at the scene.

3. Among those who responded to the screams by PW3 was **PW2, Basilisa Shishia** who, upon seeing the deceased's body went to make a report at Makunga Police Station and later the deceased's body was taken away. PW2 said that although he knew the accused person, he never saw him at the scene.

4. **PW4, Joseph Suchi Opande** also went to the scene after the incident and kept vigil until the body was taken away and he and **PW5, Paulina Nasiche Chuma** were present when the post-mortem was conducted on the deceased's body.

5. I should pause here and state that no doctor testified; no arresting officer testified and no investigating

officer testified but when the accused person was put on his defence, he denied committing the murder and said that on the material day, he was at his home and stated that the witnesses who testified were unknown to him and they all lied.

6. The question that I must first address is whether death can be proved without medical evidence, as was the fact in the present case. In Ndungu vs R [1985] KLR 487, the Court of Appeal made reference to the case of R vs Cheya & Another [1973] E.A. 500 where it had been argued successfully, that death could be established other than by medical evidence.

7. In the instant case, PW1 and PW3 were with the deceased the whole afternoon on the material date and they were consistent that it was the accused person, whom they knew well, who must have killed him because both saw him standing over the deceased who was motionless and he also attacked PW1 after threatening to cut his head. The deceased died on the spot and with or without medical evidence, there is no doubt that he was the one who inflicted the injuries that PW5 described as follows;

***“..... the deceased had been cut with a panga until the head burst.”***

8. PW5 had earlier in evidence said;

***“I checked the body on the left side of his head. It was a deep cut.”***

9. PW3 similarly said so and he was at the scene when the deceased was cut and I saw him moments after the injuries were inflicted.

10. I am convinced that the above evidence fits what the judges in Ndungu (supra) described as “*illustration of the proper application of the principle that death can be established without medical evidence*” and one of those circumstances was “*a stab through the head or a crushed head.*” In this case, the deceased on being cut, screamed once and died. The accused person caused that injury and I say so for the following reasons;

11. The evidence of PW1 and PW3 on identification was not challenged and both were close enough in fair evening light to recognize the accused person who even spoke to them. I am satisfied that he then viciously cut the deceased for no known reason save that before he did so, he had told PW3 that;

***“the things that you have been discussing about me are known to me; you may proceed.”***

12. PW1 on the other had heard him saying;

***“I am Daniel; you may pass.”***

13. These words and the recognition would leave no doubt that the accused person committed the offence.

14. Regarding his defence, I have carefully considered it and I am satisfied that having been recognized

at the scene, the accused person could not have been at his home as he claimed. The alibi defence is of the weakest kind in any event.

15. With or without the evidence of the doctor, investigating officer and the arresting officer, this case was clear-cut and that evidence would not have in any way changed the weight of the evidence tendered. There are no grey areas which those witnesses would have filled and the evidence on record is sufficient to establish criminal culpability.

16. In the end, I am satisfied that malice aforethought was proved by the brutal attack of an innocent man walking home and with evidence of the one fatal injury inflicted on him, murder was proved beyond reasonable doubt.

17. In the event, I will find the accused person guilty as charged and will convict him accordingly.

18. Orders accordingly.

*Delivered, dated and signed at Kakamega this 13<sup>th</sup> day of April, 2011*

**ISAAC LENAOLA**

**J U D G E**