



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**CRIMINAL CASE NO. 45 OF 2004**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**JULIUS M'IMUNYA ..... ACCUSED**

**JUDGMENT**

The accused person **Julius M'Imunya** is charged with murder contrary to section 203 as read with section 204 of the penal Code. The particulars of the offence are that on the 20<sup>th</sup> day of March 2004 at Kiegoi Location in Meru North District within Eastern Province, murdered **Julius Marua Nkarichia**.

The prosecution called 7 witnesses. PW1, PW2, 4 and PW5 were with the accused person and others at a bar where they were taking alcohol. The deceased was selling the beer to the customers at the counter.

PW1 who was a civic aspirant gave Kshs. 1000/= to the accused to buy beer to customers at the bar. According to PW4, the accused gave the Kshs. 1,000/= to the deceased and identified to him the people he should sell the beer to. Some of those people claimed that they were not given any beer and they quarrelled the accused about it. The accused then went and also engaged the deceased demanding a refund for the money that was not exhausted from the 1000/= he had given to him. The accused person was chased away by the deceased who had a long walking stick, according to PW4. The accused person was said to have gone out and in 5 minutes he returned with a dagger with which he stabbed the deceased 3 times in the chest before running away.

The deceased died out of the injuries that he suffered in the attack. The post mortem report exhibit 1 was produced by the investigating officer PW7 and it confirms that the cause of death was respiratory failure due to bilateral and lung collapse due to stab wounds which led to haemothorases.

The accused person gave a sworn defence. He put forward an alibi defence that although he was in the bar in question, he only took beer up to 7.10pm. He said he left at 7.10 to deliver miraa for transportation and that he never returned to the bar. The accused stated that Joel Nkunja was the suspect and that he found him in the police cells; that when he produced the murder weapon to the police, the police released him.

I have carefully evaluated and analysed the evidence adduced by both sides. The burden lies on the prosecution to adduce evidence to show that the accused person due to some act that was motivated by malice aforethought committed an act or an omission which led to the injury that caused the death of the deceased. The prosecution must prove its case against the accused person beyond any reasonable doubt.

Mrs. Kaume for the accused person urged that the prosecution failed to prove the charge against the accused. She said that the witnesses were all drunk and that even though they were in the bar at the time

of the incident, only one of them PW4 witnessed the accused stab the deceased. She also urged the court to accept the accused alibi defence and acquit him for the offence.

Mr. Mungai for the state urged that the prosecution had proved its case on the required standard. Counsel urged that the prosecution had adduced evidence to show that the accused person after a confrontation with the deceased, walked out and returned with a dagger with which he stabbed the deceased.

I have considered the issue of the consistency of the evidence of the eye witnesses. As I started by saying, there were 4 eye witnesses. However, they were not all together at the same time. PW1 gave the Kshs. 1,000/= which led to the quarrel between the accused and the deceased. After he gave the money to the accused, he left the bar before any confrontation took place. PW2 on the other hand was at the bar at the beginning of the evening. He left for a canteen where he took tea. He returned later to the bar only to find a lot of blood on the veranda. PW2 did not witness the incident.

PW4 and 5 were the ones who were present at the bar at the time of the incident. PW4 followed the entire episode from the very beginning when the accused gave the Kshs. 1,000/=, that PW1 had given out for drinks, to the deceased, until the time that the accused stabbed the deceased in the chest. From the evidence of PW5, he was not detailed, giving the impression that he was not very keen on what was happening around him at the bar. It is however clear from the evidence of PW4 and 5 that they witnessed the exchange of words between the accused and the deceased; they were aware of the reason for the contention between the two, which was over whether the Kshs. 1000/= that PW1 gave to the accused had all been used up to buy drinks for the people the accused had identified. They were also very clear that the accused person left the bar for 5 minutes and then returned with a dagger which he used to stab the deceased. They both witnessed the stabbing of the deceased by the accused person.

I found these two witnesses PW4 and 5 were forthright witnesses with a good demeanour and gave the impression that they were truthful witnesses who were worthy of believe. I believed their evidence that the accused stabbed the deceased in the chest 3 times over a quarrel after money given by PW1 for the enjoyment of patrons at the bar.

The accused denied the charge and put forward an alibi defence. In the case of **UGANDA v. SEBYALA & OTHERS [1969] EA 204**, the learned Judge quoted a statement by his lordship the Chief Justice of Tanzania in Criminal Appeal No. 12D 68 of 1969 where his lordship observed:

**“The accused does not have to establish that his alibi is reasonably true. All he has to do is to create doubt as to the strength of the case for the prosecution. When the prosecution case is thin an alibi which is not particularly strong may very well raise doubts.”**

I have considered the alibi defence by the accused and find that it cannot withstand the strong evidence adduced by the prosecution. It is clear from the prosecution witnesses PW1, 2, 4 and 5 that he was present at the bar where the incident took place. It is also clear from the evidence that PW4 and 5 that he was the one who quarrelled with the deceased before walking out and returning armed with a dagger with which he stabbed the deceased three times in his chest. I therefore find that the evidence of the prosecution was watertight as against the accused. The witnesses knew the accused person before and there was sufficient light inside the bar where they were seated. There is no possibility that the two witnesses mistook the identity of the one who stabbed the deceased. I therefore find that the defence of alibi cannot stand and I reject it in total.

Mrs. Kaume urged that the accused person had been drinking as were PW4, 5 and the deceased, and that therefore they were drunk at the time. I find this point not disputed that the accused, the deceased, PW4 and 5 were all drinking at the time of the incident, and that they had been drinking since 7pm that evening. Intoxication is defined under Section 13 of the Penal Code. Section 13 (1) and (2) of the **Penal Code** provides as follows:

**“ Save as provided in this section, intoxication shall not constitute a defence to any criminal charge.**

**Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and**

**(a) the state of intoxication was caused without his consent by the malicious or negligent act of another person: or**

**(b) the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission.”**

The incident took place at a bar. The accused person and the deceased and others had been drinking and especially the accused, who was present at the bar as a patron unlike the deceased who was selling the beer. The reason for the argument between the accused and the deceased was very unreasonable and the action the accused took was equally unreasonable and the only explanation for that extreme behavior was the fact that his mind was impaired by reason of intoxication. I find that by reason of that intoxication the issue of malice aforethought is vitiated, and that the only charge that can stand against the accused is that of manslaughter contrary to section 202 of the Penal Code.

The accused person raised the issue of one Joel as the one from whom the murder weapon was found. The murder weapon was not produced in court and it is clear from the evidence before this court that it was not recovered, not even in the hands of the accused. That person Joel did not feature in the evidence of the prosecution witnesses, especially at the critical time when the injury was caused to the deceased. That being the case, the issue of Joel is of no consequence and is immaterial to the prosecution case and does not advance the accused defence.

Having come to the conclusion I have regarding this case, I find that the prosecution has proved the charge of manslaughter contrary to section 202 of the Penal Code. I will substitute the charge against the accused from murder contrary to section 203 of the Penal Code to that of manslaughter contrary to Section 202 of the Penal Code. I find the accused guilty of substituted charge of manslaughter contrary to section 202 of the Penal Code and convict him accordingly.

**DATED, SIGNED AND DELIVERED AT MERU THIS 8<sup>TH</sup> DAY OF DECEMBER 2011.**

**LESIT, J.**  
**JUDGE**