



REPUBLIC OF KENYA
HIGH COURT AT NAIROBI (MILIMANI LAW COURTS
CRIMINAL CASE 96 OF 2005

REPUBLIC.....PROSECUTOR

VERSUS

PAUL NJEHIA KANUGU.....ACCUSED

JUDGMENT

The Accused has been charged for the offence of Murder, contrary to section 203 as read with section 204 of the Penal Code, Cap 63 Laws of Kenya. The particulars of the offence as stated in the information are as follows:

“On 6th day of April, 2005 at Kabuku village in Kiambu District within Central Province, murdered STEPHEN MULU MUEMA.”

In his evidence, PW1, Anthony Kamuto Kanyago introduced himself as a welder staying in Kabuku village Tigoni. Apart from the above, PW1 recalled that on 5th April 2005, as he was asleep in his house, at around 9.00 p.m., Mary Nyambura went and requested him to go and help Mulu who had been stabbed. Consequently, PW1 accompanied Mary Nyambura to her house where they gave Mulu first aid. PW1 observed that Mulu had been injured on the left side of the chest and he was bleeding. Thereafter they used a towel to cover the wound. By then Mulu was not talking and thereafter they got a vehicle that the victim to Tigoni Hospital. PW1 clarified that when they got the vehicle Mulu was already dead. It was also his evidence, that Joseph Nyaga and Patrick Njoroge later went to report the matter at Majiri Police Post. PW1 concluded his evidence by stating that the accused is his elder brother. On the other hand, PW2 Samuel Mbugua Kanugu recalled that on 5th of April 2005 at around 10.00 p.m. while he was asleep, his sister in law, Mary Nyambura knocked the door and informed him that Joseph Mulu had been stabbed with the knife and was lying outside their house. On accompanying Mary Nyambura to the scene, PW2 saw the deceased lying down while bleeding from the neck to the shoulder blade. After a short while, Njoroge drove his vehicle up to the scene and they carried the deceased up to the ‘boma’ of their mother. On arrival, Njoroge touched the body of the deceased and declared that he was already dead. From there they went to report the matter at Majiri police post where they were given two police officers who escorted them back to the scene. After the officers viewed the body, they later went back to look for transport to collect the body.

In his evidence, PW3 Joseph Nyaga Kanugu identified the accused as his younger brother. Further to the above, he testified that on 5th of April 2005 at around 9.30 to 10.00 p.m. his wife called Hannah Mumbi explained that their worker had been stabbed by a knife. In response, PW3 went outside where he met somebody who confirmed that Mulu had been stabbed and that people were rushing to the scene. On

going there, PW3 found Mulu outside Ndiva's house. By then the deceased was bleeding profusely and was being given first aid by John Ndiva. PW3 observed that Mulu's shirt was blood stained though he could not see where the injury was. When the vehicle of PW3 could not start, he rang Patrick Njoroge who explained to him that he was next to Tigoni Police Station. After about 10 minutes, Patrick Njoroge came to the scene, and they realized that Mulu had already died before being taken to the hospital. Seeing the above, PW3 and Njoroge reported the matter to Majiri police post. On the way they met police officers who rang the OCS who later went to the scene accompanied by other police officers. On arrival at the scene, PW3 explained to the police officers that he did not know who had stabbed Mulu. PW3 concluded his evidence by stating that he never saw the weapon that had been used to commit the offence.

On her part, PW4 Mary Nyambura Ndiva testified that on 5th of April 2005, at around 10.15 p.m. while she was asleep with her family, she heard somebody calling out the name of her husband who is John Ndiva. By that time, PW4 did not know who was calling her husband's name. The said person was pleading to be helped by her husband since he claimed to have been stabbed by one Njehia. In response, PW4 and her husband woke up and lit a hurricane lamp. On going outside PW4 found out that the person who was in distress was actually their worker called Mulu. PW4 explained that Mulu had been employed for two years by the mother in law. Apart from the above, PW4 observed that Mulu was bleeding from the nose and the mouth. Though her husband talked to him, he could not reply. From the scene PW4 went to call Anthony Kamutu and Samuel Mbugua who accompanied her back to the scene. Consequently, Njoroge went to the scene and after they had put the body of the deceased in the vehicle, he observed that the deceased was already dead. Eventually, the body of the deceased was collected by police officers at around 3.00 a.m.

In his evidence, PW5 Samuel Mavindu Kinyili introduced himself as a technician and a brother to the deceased. Besides the above, he also testified that on 18th of April 2005 he accompanied police officers to the city mortuary where he identified the body of the deceased before a post mortem was carried out. According to PW5, he saw an injury on the left side of the deceased. On the other hand, PW6 John Ndiva Kanoo introduced himself as a welder in the informal sector. He also testified that on 5th April 2005, at around 10.00 p.m. while he was asleep with his family, he heard somebody calling his brother, Francis Kamau. He was then called by Mulu who works for his mother. After about 5 minutes PW6 heard Mulu knocking on his door while pleading to be helped since he had been stabbed by a knife. Subsequently, PW6 and his wife lit the lamp and went outside. While there, Mulu complained that he had been stabbed by one Njehia. When PW6 went out, he found that Mulu had fainted on the verandah while having a hole next to the shoulder from where he was bleeding. Seeing the above, PW6 sent his wife to look for transport to take Mulu to hospital. However, when Njoroge came to the scene he declared the deceased dead. Thereafter police officers from Tigoni Police station went to the scene where they collected the body. In his evidence, PW7 PC Mark Kariuki Ndwiga introduced himself as a Police Officer attached to Majiri Police Post. Apart from the above, PW7 also testified that on 5th April 2005, while he was on a road block with PC Muiruri, they were approached by Patrick Njoroge and Nyaga who reported that the accused had killed a worker by using a knife. From there PW7 took them to the police post where he recorded their statements. Thereafter PW7 and PC Muiruri proceeded to the scene where they found that the deceased was already dead. On going to the house of the accused, they never found him. Despite a search in the surrounding farms, they also never traced the accused.

In his medical evidence, PW8 Dr. Peter Muriuki Ndegwa introduced himself as a Pathologist attached to the City Mortuary. In addition to the above, he testified that on 18th of April 2005, he performed the post mortem on the body of Joseph Mulu Mwema whose body was well refrigerated and that externally there was a penetrating stab wound, on the left anterior chest wall. He also observed that the left lung was punctured with a lot of blood in the chest cavity. After the examination, he formed the opinion that the cause of death was exsanguinations due to severe chest and lung injury by a sharp object. Later he signed the post-mortem form and produced it as exhibit 1. In his evidence, PW9 Richard Mamai introduced himself as a CID officer attached to Gilgil police station. He stated that on 14th April 2005, he received a letter from Tigoni Police Station requesting them to arrest a suspect namely viz, Paul Njehia Kanugu who was said to have murdered somebody and escaped to Gilgil area. They had been informed that the crime

had occurred in Tigoni area. They then proceeded to Maji Moto area where they found the suspect trying to run away. However, they gave chase and they managed to arrest him. They later escorted the accused to Gilgil Police Station. On arrival they informed Tigoni Police Station to send police officers to collect the accused.

In his medical evidence PW10, Dr. Zephania Kamau testified that on 15th September 2005, he examined the accused and found him to be 36 years old and without any physical injuries. He also found him to be mentally fit to stand trial. Eventually he filled and signed the P3 form which he produced as exhibit 2. On his part, PW11, PC Christopher Kithuka testified that on 6th April 2005, he was called by Inspector Muguna at around 2.30 p.m. and informed that there was a scene of murder at Kenga farm. From there, he accompanied Inspector Muguna to the scene where they found police officers from Majiri Police Post who directed them to the compound of the owner of the farm. On arrival they found a body that was covered with a bed sheet. PW11 later saw that the left shoulder of the deceased was injured and that he was bleeding. After collecting witnesses they also took the body of the deceased to the City Mortuary.

In his defence, Paul Njehia Kanugu, the accused, introduced himself as a mechanic who is involved in body building of vehicles. He testified that on 5th of April 2005 he went to Gilgil in the evening. While there, a worker called Stephen Mulu Mwema approached where they were and delivered milk. After weighing the milk the accused gave the worker a card to enable him to deliver some milk to the dairy. According to the accused, he walked together with Mulu up to the bus station where they parted ways. From there, the accused went to a Jua Kali garage where he collected a wire and started working with George Mbugua who was an apprentice. They managed to finish the work at 12.20 p.m. and thereafter the owner of the car went to the garage and informed them that he wanted to go to Kinangop to carry some carrots. At the request of the accused, the motorist gave him a lift upto Majiri bus station where the accused met Mulu and they greeted each other. Subsequently, Mulu informed the accused that he had already collected three 'debes' of "Kayapa" seedlings. Consequently the two went and planted those seedlings, and later went to a hotel where they took tea. Thereafter the accused paid Mulu Kshs.400 for the work that he had done. It was the testimony of the accused that from there, he took a vehicle which took him to Kariandusi to see Mama Waceke who had agreed to give him a wooden wheelbarrow to help him carry his goods. Later the accused decided to leave the seedlings behind and they also agreed that Mama Waceke would look for a worker for him. On the following day the accused went to see his aunt again and later went to Kariandusi to collect his seedlings. From there the accused went to buy fertilizers. After about a week the accused saw a vehicle next to his fence and realized that his brother was inside the same. Thereafter the brother informed him that Stephen Mulu was sick and that he had refused to go to hospital. Apart from the above, the brother urged him to accompany him so that he could convince Stephen Mulu to go to hospital. From there they went to a garage in Gilgil and thereafter to the local police station where his brother entered with two people. While there, the accused was summoned by the OCS who informed him that he was required by Tigoni police in relation to an offence of stabbing a worker. The accused complained that he was held at Gilgil police station for seven days before he was transferred to Tigoni Police Station. From there he was transferred to Banana Police Station for three days after which he was taken to Tigoni Police Station. According to the accused, he was assaulted by CID officers before being arraigned in court on 4th October 2005.

After the court delivered its Summing Up on 8th of September 2009, both Assessors returned a verdict of Not Guilty against the accused. The 1st Assessor explained that none of the witnesses had seen the accused knifing the deceased. Secondly, he also stated that there was no bad history between the accused and the deceased. Thirdly, he also stated that PW4 had stated that there are other people who are called Njehia in that area. After reviewing the evidence carefully, it is apparent to this court that none of the prosecution witnesses actually saw the accused stabbing or killing the deceased. The prosecution relied heavily on circumstantial evidence to prove their case. However, in law, circumstantial evidence must irresistibly lead to the guilt of the accused person. In this particular case, the circumstantial evidence is not water tight nor cogent. Apart from the above, it is apparent that PW4 had admitted himself that there are other people in that particular area who are also known by the name of Njehia. Secondly, this court cannot rely on the dying declaration of the deceased to prove that the accused had committed the offence. Dying declarations must be treated cautiously, must be corroborated and must prove the time of the

incident, the identity of offender and the weapon that was used. In this particular case, none of the above was proved. I hereby find that the evidence on record is not logical, consistent and cogent. The upshot is that I find that the prosecution has failed to prove their case beyond any reasonable doubt. It is on that note that I do concur with the findings of the Assessors. Under the circumstances, the defence of the accused seems reasonable and plausible. In conclusion, I hereby find the accused Not Guilty of the offence of Murder contrary to section 203 as read with section 204 of the Penal Code, Cap 63 Laws of Kenya. The accused is hereby “acquitted” accordingly. The accused should be released forthwith unless held lawfully.

Those are the orders of this court.

MUGA APONDI

JUDGE

Judgment read, signed and delivered in open court in the presence of the accused, Ms. Ruto - State Counsel and Hon. (Rtd) Mr. R. Mutitu - Defence Counsel

Order: Assessors to be paid allowances.

MUGA APONDI

JUDGE

24TH SEPTEMBER 2009