

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL CASE 4 OF 2006

REPUBLIC.....PROSECUTOR

VERSUS

CHARLES HEHO NDIRANGU.....ACCUSED

JUDGMENT

The accused person is charged with the offence of **murder** contrary to **section 203 as read with section 204** of the **Penal Code**. The particulars of the offence states that on the 25th day of December 2005, at Muchiri Farm Muramati Daiga Location in Laikipia District of the Rift Valley Province, he murdered **John Gaichuihie Wambugu**.

Simon Mathenge Wambugu, PW1, Joseph Irungu Wanjohi, PW2 and Paminous Kigo PW3 were preparing for a feast to cerebrate and mark the circumcision ceremony in respect of the accused person's brother who had been initiated. They slaughtered a goat, food was prepared, in the course of the cerebrations, and the accused person became unruly and started beating his brother who was the initiate. The wife of the accused person and his mother separated the two; the accused person was injected from the house.

PW1, PW2 and PW3 sensing danger, decided to leave the home of the accused person. On the way, they met with the deceased person; suddenly they saw the accused person running towards them. He charged at them violently and started pushing Gichimo while alleging that Gichimo had bewitched him. That is when Gichomo ran towards his home to call his mother.

PW1 and the deceased tried to restrain the accused person from stabbing Gichimo that is when the accused person stabbed the deceased and disappeared. He was seen by PW1, PW2 and PW3. The matter was reported at Muramati Police Post, after stabbing the deceased the accused person took himself to the Police Station and reported that he had been assaulted. He was re-arrested by **PC John Samoer PW5**. Immediately the neighbours rushed to report to the police this incident.

This matter was investigated by **PC Evans Cheya PW6**. He recorded statements from accused person and other witnesses. He also took the body of the deceased to Nanyuki District Hospital where a post-mortem operation was performed. The cause of death was identified as cardio pulmonary arrest due to arterial supply due to penetrating wound at supra-scapular region. The accused person was also treated for some injuries as well as a mental examination. He was certified mentally sound to stand trial. By an elaborate ruling delivered by this court on 24th July 2008, the accused person was found to have a case to answer.

Put on his defence, the accused person gave unsworn statement of defence. He testified that on the 25th day of December 2005, they were celebrating the circumcision of his brother with the witnesses and the deceased. In addition to eating meat of a goat they had slaughtered, they also indulged in drinking illicit brew. The accused person further testified that he had bought five litres of the illicit liquor. The young people had drunk the liquor and one Gichimo was so drunk that the accused person decided to escort him to their gate to go and sleep. While returning to his home, he alleged the brother of the deceased pulled him from the back and wanted to stab him with a knife. During the scuffle he managed to wrestle the knife from the deceased's brother and stabbed the deceased. In the process the accused person also sustained injuries. He decided to report the matter to Muramati Police Post where he found the

deceased's brother and gone to report the stabbing incident. The accused was also taken to hospital before he was charged with the offence of murder.

Counsel for the accused person submitted that the prosecution failed to prove the charge of murder. What is evident from the record is that the accused person and the witnesses who testified were in a celebratory mood and were drunk. A fight ensued whereby the deceased sustained fatal injuries and even the accused person was injured. This is supported by the evidence of **PW6** the investigating officer who testified that even the accused person had injuries for which he was treated. Counsel therefore urged the court to find the charge of murder was not proved and acquit the accused person.

On the part of the State **Mr. Gumo** submitted that the prosecution proved the case beyond reasonable doubt. The accused person was seen by three witnesses stab the deceased. It was in broad daylight. There was no reason to warrant such a violent and brutal attack which ultimately led to the loss of life. The accused person was attacking everybody in his vicinity on a day when there were celebrations. The knife that the accused person used to stab the deceased was in his possession throughout and he obviously knew it was a dangerous weapon which when used was likely to cause death or grievous harm. Counsel urged the court to find that the deceased died the most painful death which was executed in the most cold-blooded manner and find the accused person guilty as charged.

The defence by the accused person suggest that he was attacked by the deceased and his brother and during the scuffle he was able to wrestle the knife and stabbed in the deceased in self defence. This defence is however sharply contrasted by the evidence on record from PW1, PW2 and PW3 who were categorical that it was the accused person who started creating disturbances while at his home. He followed **Gichimo** who ran to his home to call the mother. The deceased was trying to help **Gichimo** when the accused person stabbed him without any provocation. Against this evidence, I find the defence raised by the accused person is preposterous. The offence occurred during day time, in full view of material witnesses who testified. The accused person was the perpetrator and if he had drunk himself as to lose his senses that is self inflicted loss of self control; it is not an acceptable defence.

Under the law, intoxication is not a defence unless the accused person can prove that it was caused on him without his consent through malice or by negligence of another. In this particular case, who caused the intoxication of the accused person? Secondly by reason of the said intoxication, did it cause insanity on the part of the accused person when he killed the deceased person? It is trite law that every person in the normal course of things is expected to foresee the natural causes of his actions. In other words if somebody intoxicates himself willingly he must bear the consequences of his actions.

I find the accused person was reckless when he used a knife to stab the deceased person without any provocation. The accused person was taken for mental assessment and found fit to stand the trial. I find that the prosecution have discharged the burden of prove. The accused person is hereby found guilty of the charge of murder. He is accordingly convicted of the charge.

Judgment read and signed on 14th November, 2008

M. KOOME

JUDGE