



REPUBLIC OF KENYA

IN THE HIGH COURT

AT EMBU

CRIMINAL CASE 4 OF 2005

JAMES MUREITHI JULIUS ACCUSED

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

By an information dated 14/5/2005 the Attorney General informed the court that James Muriithi Julius (accused) was charged with the offence of murder contrary to section 203 read with section 204 of the Penal Code the particulars of which are that on 27th July 2005 at Ndagadure village Kyeni South Location in Embu District he murdered Peter Njeru Julius (deceased).

The Prosecution produced the evidence of death as shown in the postmortem report produced Exhibit 5.

PW5 Dr. Alex Ombati who performed postmortem examination on the body of deceased was of opinion that the death was caused by hypotension (shock) due to internal bleeding due to blunt abdominal injury. The evidence as to how the injury occurred was given by witnesses. The mother of accused and the deceased (they were brothers) gave evidence first. She told of how her son (accused) found in her kitchen on 27/7/2005. She gave him food. Accused said he was with deceased and the PW1 should keep some food for him. Further evidence shows that earlier the accused had met the deceased in a bar at Makutano and both had exchanged words. The accused did not like the way deceased was boasting that the deceased had secured the release of accused by bond. In fact it was the mother PW1 who had arranged for bond. Accused stood up got hold of deceased by collar and pushed him. Deceased who was drunk fell down at the corner. Accused started beating deceased. Accused got a wood plank (produced as exhibit 1) and was chasing the deceased around the outside of the house. Accused hit deceased with a stool. When his mother (PW1) ordered accused to stop beating deceased he did not obey her. Although there was screaming and commotion and although the mother PW1 went to call the assistant chief no one came to help them. It was at night and they went to sleep. In the morning when it was time to wake up they found deceased had already passed away. The matter was then reported to police.

PW2 a teacher and son of PW1 was at home and witnessed this incident. He heard his mother PW1 screaming and saw accused chasing the deceased around the house. He saw the deceased squatting behind the wall of the kitchen. The accused hit him twice with a piece of wood. PW3 a police officer testified of how he charged the accused with offence of murder.

PW4 was also an officer who visited the scene of crime. He drew a sketch plan of the scene. He said neighbour were far from the scene. He is the one who took accused to hospital for mental assessment. When the accused was put to his defence he chose to make an unsworn statement he said on that day he

was not at home. He was in prison on 26/7/2005 but his mother arranged bond for him. On 27/7/2005 he arrived at home and found her preparing tea. Then she asked him to take Njeru (deceased) to hospital. He noticed deceased was not responding as he lay down but he looked alive. It is to be noted that the statement of the accused is unbelievable. The evidence of PW1 and PW2 was reliable. There was no reason for them to implicate the accused. They saw accused beat his brother deceased. He was at the scene at the material time. The unsworn statement cannot weaken the evidence given on oath.

It is my finding that it was the accused who beat up his brother the deceased and caused his death as a result. However I find that the necessary ingredient accompanying the offence of murder was not proved. From the evidence it is clear that the two were in a bar where the accused was annoyed by deceased saying he had helped to get him out of jail. As it was the mother of PW1 who had arranged for bail. The deceased was drunk and when he was assaulted by accused he fell down. It is clear the dispute was perused at home where the two brothers met again. The accused continued beating the deceased with a wooden timber plank. When deceased went to sleep he did not make it to morning he succumbed to the injuries. The doctor's evidence on the cause of death is consistent with injuries inflicted. This trial was conducted with the assistance of Assessors. The opinion of the two assessors who were present to the end was that there was no intention of killing shown in the circumstances the accused should be found guilty of the lesser offence of manslaughter.

I am not bound by the opinion of assessors but in this case I agree with them the evidence produced by the prosecution is not of standard to convict for murder.

However I find the accused had no reason to assault the deceased as he did there is some evidence that his brother deceased may have annoyed him by discussing his having been to jail in a bar. There is also evidence that the deceased was drunk. In all these circumstances, I find the accused guilty of the offence of manslaughter. I convict him accordingly.

Mitigation:

State - We do not have his records treat him as first offender.

Ms Mwangi: Accused is young person from circumstances of case he did not intend to kill the deceased he is a first offender, treat him with leniency.

Sentence:

Upon considering the mitigation and that he is a first offender and that it was his own brother who died it is my view that a custodial sentence is appropriate. This offence carries life imprisonment. However in the circumstances the Accused shall serve imprisonment for a period of 5 years from today.

It is so ordered.

Dated this 9th October, 2007.

J. N. KHAMINWA

JUDGE

16/10/2007

Khaminwa – Judge

Njue –Clerk

Mr. Kimathi for state -Present

Ms Mwangi HB for Fatuma.

Accused present

Two Assessors present

1. Wathomi Gakombo

2. Joseph Kariuki Ismael

All present

Judgment read in open court.

J. N. KHAMINWA

JUDGE