



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Criminal Case 4 of 2006

REPUBLIC.....PROSECUTOR

VERSUS

LAWRENCE NGARI MBUKO.....ACCUSED

RULING UNDER SECTION 306 CPC

The accused is charged with the offence of murder contrary to Section 203 read with Section 204 of the parcel code.

The particulars of the offence are that on the 10th day of February, 2006 at Ngongi village Kithimu Location in Embu District, he murdered Robert Njiru Mbogo hereinafter called 'deceased'. The prosecution evidence is that PW1 was the first person to reach the scene. She found deceased lying down and Accused standing therewith his wife making noise. PW1 travelled a distance of 40 metres to inform the family of deceased. She did not witness any fighting. PW2 was at his home at about 6 p.m. He met with accused and his father on the road. Robert Njiru Mbogo deceased, was there. Accused passed and went and hit deceased on the chest. He did not talk to deceased. Accused had no weapon but he hit deceased with a fist. PW2 asked Accused why he hit the deceased but he received no answer when the deceased fell down and did not arise again, he died. A girl Millicent went to call people (neighbours). She is the one who informed PW1.

PW2 testified that there was no fight between deceased and accused but that accused hit the deceased with his fist on the chest and neck. The accused had come to the scene accompanied by his wife.

PW3 went to the scene when deceased had already died. He saw accused at the scene. He did not witness the incident.

PW4 is the Millicent who was mentioned by PW1 and PW2. She gave unsworn statement. She appeared not to remember what happened on 10/2/2006 and she was discharged.

PW5 was the mother of deceased. She went to scene and found her son lying down. Then accused came and called Njiru (deceased) three times, then he left saying he was going to get a vehicle. This evidence supports that of PW3 as to the conduct of accused after death of deceased. She confirmed that she knew accused since birth but she was not aware of any time they quarreled. Their two families had no dispute. When she arrived she found her son already dead. She also added that when her co-wife Veronica asked Accused if he had hit the deceased, Accused said he had just slapped him slightly. Evidence of Veronica supported that of PW5. The father of accused was PW8. When he reached the scene he found deceased laying down. He asked what had happened, a person said "It is Ngari" accused.

He asked Ngari 'Accused' and was told Ngari had gone to look for a vehicle. His evidence was that the deceased and accused were friends. And that accused took himself to police.

PW9 was a police officer who received a call that there were two persons fighting at Ngongi. The witness and other police officers traveled to the scene and found a crowd and body a lying on the road. On examining the body he found no injuries. Accused was there but then went away saying he would look for a vehicle. Witness took the body to Embu Hospital. Later this witness arrested the accused when he came to station after 2 days. When this witness reached the scene there was no fight and nobody talked to him of a fight. Evidence of Postmortem examination was produced under Section 77 Evidence Act without any objection from accused. The postmortem report was produced as exhibit 2. As a result of examination the doctor formed the opinion that the cause of death was "suspected cause of death was intracranial Hemorrhage from the sagittal sinus due to a fatal blow or the fall from the blow. It is to be noted that the postmortem form contained brief information that "the deceased was found lying on the ground at a road while he was dead". The opinion of the doctor is not conclusive.

Upon considering the above evidence offered by prosecution it is clear that the accused is said to have slapped the deceased slightly and also that he was seen approaching the deceased and hitting the deceased a fist on chest and neck. However the postmortem report does not confirm that this was the cause of death. Infact the opinion of the doctor is not conclusive. Therefore I am not sure of what the cause of death was. The evidence goes to indicate that there was no reason why the accused should have killed the deceased. They were said to be friends and grew together and there was no disputes between the families. There was no evidence of a fight as such. Although the Investigation Officer was called that people were fighting he did not investigate that fight.

I find the prosecution evidence does not measure up to the standard demanded on Criminal Cases. The prosecution did not prove beyond reasonable doubt that the accused committed the offence. I therefore make a finding that the evidence of prosecution can not support the charge. I apply Section 301 (1) and enter a finding of NOT GUILTY. The accused shall be set at liberty forthwith unless otherwise lawfully held.

Dated this 19th November, 2007.

J. N. KHAMINWA

JUDGE

19/11/2007

Joyce Khaminwa – Judge

Njue – Clerk

Mr. Kimathi for State

Mr. Nthiga for Accused

Accused - present.

Assessors in this case are discharged due to change in the law. However, to be paid for today as they were called.

J. N. KHAMINWA

JUDGE