



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NYERI

Criminal Case 14 of 2004

REPUBLIC.....PROSECUTOR

Versus

JOSEPH WAMBIRWA MWATHI.....ACCUSED

JUDGMENT

The Accused is charged with murder contrary to *Section 203* as read with *Section 204* of the Penal Code particulars alleging that on 2nd February 2004 at Gatitu Village in Nyeri District within Central Province, the Accused Person murdered Samuel Mukuria Wanjiru.

From the totality of the evidence of P.W.1 Patrick Thanju Wambirwa, P.W. 3 Samuel Mukuria Wambirwa and P.W.4 former Chief Muriuki Muchunu, the Accused person is the father of P.W.1 and P.W.3 and he lived with his wife and his daughter who was the unmarried mother of the deceased, a child of about seven years. The deceased lived with them. But the poor boy had disabilities which included his inability to walk and also to talk in the normal way.

On the 2nd February 2004 the Accused's wife and their daughter had gone to work in their garden which appears to have been far away from their home when P.W.1 who was taking grass to a goat's shed and feeding the goats at their homestead saw his father in their kitchen which was a room next to the goat's shed. As P.W.1 walked out from the goat's shed to fetch more grass, his father who was also walking from the kitchen called him and informed him that he (the accused) had killed the Deceased. P.W.1 followed the Accused to hear more from the Accused as the Accused walked towards the main door of his house to show P.W.1 what had happened.

The Accused pushed open the main door to enter the house and as P.W.1 followed the Accused, P.W.1 saw the child lying on his back on a polythene paper on the floor of the sitting room bleeding from a cut wound in the front side of the neck – the throat. The body had a vest on.

Horrified by the sight of the body of the child, P.W.1 picked no courage to inquire anything from his father. Instead he rushed outside to call his elder brother P.W.3 who with his wife were working in a garden some 300 metres away. P.W.3 joined P.W.1 and they went back to the house where the dead body of the child was lying. On seeing it, P.W.3 who also became aware that the Accused was in his bedroom in that house inquired from the Accused what had happened. P.W.3 told the court that his father replied that he had done what P.W.3 had seen. P.W.3 went on to say that he took that to mean that the Accused had said he (the accused) was the one who had killed the child.

The two brothers decided to go and report the matter to the Police at Mukurweini Police Station. The

Police sent them to look for a motor vehicle and the brothers decided to look for that motor vehicle separately. While P.W.1 was successful, P.W.3 was not and as he was returning to the Police Station to report his failure to get a motor vehicle, he saw the Accused walking as if he was going to the Police Station. He decided to follow the Accused from a distance. P.W.4 who was going the same direction saw the Accused and P.W.3 and walked faster to catch up with the Accused with whom they started talking as they walked along.

P.W.4 who had already had information that the Accused had killed the deceased told the court that as they walked along, the Accused person, a neighbour and relative he knew from childhood, told him that he (accused) had killed the deceased. By that time P.W.4 had already retired as a chief and the Accused gave that information to P.W.4 out of the Accused's own volition. The Accused added that he had used a knife which he subsequently kept at a place where there was firewood in the kitchen.

Earlier the Accused had told P.W.4 that he was going to Nyeri and had only Sh.100/= for transport. The witness P.W.4 asked the Accused to accompany him to where P.W.4's daughter was to add the Accused Sh.100/= more for transport and the Accused accepted.

When they were passing Mukurweini Police Station, P.W.4 held the Accused to take the Accused to the Police Station and as P.W.4 struggled with the Accused, P.W. 4 was assisted by a Police Officer and they took the Accused to the Police Station where the Accused Person was locked up in the Police cells.

As that was happening, P.W.1 who had obtained a motor vehicle had, together with Police Officers, who included P.W.5, visited the scene of crime, seen the Deceased's body, searched and found a knife from the kitchen on rafters where firewood was. They took the knife, collected the dead body and went back to Mukurweini Police Station where they found the Accused Person had been locked up in police cells. They took the dead body to the mortuary.

On 10th February 2004 a postmortem was performed on the body of the deceased and P.W.2 Dr. Abraham told the court that he found a deep cut wound at the anterior neck. The trachea, carotid arteries, thyroid and jugular veins were all severed. He formed the opinion that the cause of death was severe haemorrhage due to cut neck. The postmortem report is exhibit 2.

When the knife, exhibit 1, was found, it was clean without blood stains. It was therefore not sent for clinical test. But was found in the kitchen where P.W.1 had seen the Accused before the Accused told P.W.1 that he, the Accused, had killed the Deceased using a knife. P.W.4 told the court that the Accused Person had told him that the knife was at the firewood and that he, P.W.4, had given that information to the Police. But from the rest of the evidence, if P.W.4 gave that evidence to the Police, it was given too late as the Police had already found exhibit 1 at the time they collected the body of the deceased from the house of the Accused person.

In his defence the Accused person told the court that he had left home and gone somewhere. When he returned to his home he found the deceased having died. Since he had loved the deceased, he went to the Police Station without talking to anybody. That was all in his brief defence.

I have carefully considered the evidence before me and hold the view that the evidence is sufficient to sustain a conviction. I have no reason to doubt the evidence of P.W.1, P.W.3 and P.W.4 concerning the Accused Person. I have no reason to doubt the evidence of P.W.2, the postmortem doctor or the evidence of P.W.5 Police Constable Rames Njeru. From the evidence before me, I cannot accept any suggestion that anyone else, apart from the Accused person, committed this offence. The Accused person talked to P.W.1, P.W.3 and P.W.4 and what he told them is clear and consistent. The intention to kill can be seen from the nature of the injury. It was not stabbing. It was slaughter done at the throat where the person doing the slaughter must have had the intention to kill although the motive for that killing has not been brought out. According to the doctor, the cutting was so deep that the head remained connected with the rest of the body only by means of muscles at the back of the neck. In the circumstances, I am satisfied

that the prosecution has proved the offence of murder against the

Accused person beyond reasonable doubt. Assessors unanimously came to the same conclusion.

Accordingly, I find the Accused person guilty of the offence as charged and convict him.

Dated this 1st day of March 2005.

J. M. KHAMONI

JUDGE