



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CRIMINAL CASE 23 OF 2003**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**MUEKE NGENYA ..... ACCUSED**

**SUMMING UP BY JUDGE**

The accused, Mweke Ngengya, 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 are that on the 29/5/02, at Chululu village, Kilaa sub location, Mwitika location of Kitui district, murdered Ngengya Nzungi. Accused denied the offence. The prosecution called a total of 8 witnesses in support of their case whereas the accused made an unsworn statement.

Gentleman and lady assessors, having heard all the evidence before you by the prosecution witnesses in support of the charge and the evidence of the accused in his defence, I urge you to bear in mind the following salient issues of law and evidence before arriving at your verdict in this case. Please also bear in mind the submissions in this case by both counsels for the state and for the defence with particular regard to the following:

1. This being a criminal case, the burden of proof that the accused person committed the offence charged is entirely upon the prosecution and at no time can such burden shift to the defence or the accused person.
2. The prosecution case against the accused person must be proved beyond any reasonable doubt.
3. The existence of any a doubt leads to an acquittal, that is, to say if you entertain the slightest doubt that the accused person could or could not have committed the offence charged, that benefit of doubt goes to the accused person and you must return a verdict of not guilty.
4. You must consider the case of the defence. Failure to consider the defence will be fatal to any verdict that you may arrive at. Consider both the prosecution case and the defence case in their totality.
5. Murder is defined in Section 203 of the Penal Code. These are the elements of the offence which must exist and which must be proved before the accused person can be found guilty of the offence.

- i. Malice aforethought
- ii. Cause of death
- iii. By unlawful act.

Malice aforethought is defined in Section 206 of the Penal Code. The ingredients are:

- i. Intention to cause death or grievous harm;
- ii. Knowledge that an act will cause death or grievous harm.

**Evidence:**

The deceased was about 80 years old at the time of this death. He is the accused's father. He was blind at the time of death.

PW1 Taabu Mueke, is the daughter of the accused person. She recalled that on 29/5/02, at about 7.00 a.m. she took some tea to her grandfather, the deceased, who lived in the same compound, in her aunt's house which was about 50 metres from the accused's house. The deceased was still asleep and so she left his breakfast on the table. PW1's sister Juliet Mbula (PW3), left for the river while their mother went to the farm. The father came home at about 7.00 a.m. PW1 washed his jacket for him and when going back to the house, the accused asked PW1 to take back into the house a jug of water. She entered the house and she heard her sister ask what was happening to their grandfather whom PW1 heard screaming. At that time there were no other people in the compound except the grandfather. When she looked at the aunt's house, she saw her father come out of the aunt's house running, banged the door and ran behind the house. She did not know where he went. She did not hear any more screams. She feared to go the house where her grandfather was till Mbula (PW3), came back from the river and in company of the uncle's wife, the three went to the aunt's house and found the deceased on the floor with the head in the bedroom while his feet were in the sitting room. Blood was oozing from the back of his head; the deceased was not able to talk. PW1 ran to go to look for her father and later found him at the kitchen of the school. She informed him of the injuries the deceased had suffered. Many other people came and later the deceased was taken to hospital.

PW1 later heard from the people who came to the scene that a club had been found behind the aunt's house and that it was the likely weapon used in injuring the deceased. The deceased died two days later while undergoing treatment. PW1 denied knowing of any disagreement between the deceased and the accused.

PW2, Simeon Mbai, recalled that the accused was a member of the school management committee where he was a headmaster. He recalled on 29/5/02, at about 10.30 a.m. to 11.00 a.m. the accused passed by the school to enquire when the meeting would be and PW2 told him that it would be at 2.00 p.m. and at about 12.45 p.m. he learnt that accused was being looked for by a child from his house as the accused's father had been injured. He went to the home of the deceased where he found many people gathered and people arranged to take him to hospital. He noticed that the deceased was injured on the head and suffered broken ribs. Again he was not aware of any disagreement between the accused and his father the deceased.

PW3 Mbula, accused's daughter and therefore deceased's grand daughter recalled that it is PW1 who took breakfast to their grandfather that morning; their father arrived home about 9.00 a.m. And their mother went to the farm. PW2 went to fetch water from the river and left the accused and PW1 at home. When unloading water from the donkeys she heard screams from her aunt's house and she sent PW1 to go and see what was happening. She joined PW1 and their aunt at the aunt's house where deceased was and found the deceased on the floor, injured on the back of the head. She asked PW1 to go and call the father.

The accused helped to look for the suspect. She said that the relationship between accused and deceased was good. She identified the club that was recovered and it had stains of human blood.

PW4, Simon Katiba Ngengya, a brother to the accused and son to the deceased only learnt of the deceased having been injured at about 6.30 p.m. on 29/5/02. He knew that the accused and the deceased related well. He identified the deceased's body to the doctor so that postmortem could be done on 7/6/02.

Postmortem was conducted on deceased's body by one Doctor Mbithi. He filled a postmortem report which was produced in evidence by PW5, Doctor John Mulinge, the Medical Officer Health, Machakos. PW5 had known Doctor Mbithi for over 10 years. Doctor Mbithi found that the deceased had a swelling at the back of his head caused by blood accumulation. On dissection, he found haematoma on the occiput (back of the head) and multiple fractures of the occiput. He formed the opinion that the cause of death was cerebral trauma due to severe ultra cranial haematoma due to severe head injury.

Mawia Ndunda (PW6), a daughter in law of the deceased and therefore a sister in law to the accused came back home from the river on 29/5/02 and found the deceased had been injured and there were members of public. She attempted to talk to the deceased but he did not respond.

PW7, Mumo Mueke, the son of accused received information of the attack on the deceased but by the time he reached home, the deceased had died. He identified the body of the deceased to the doctor on 7/6/02, for purposes of postmortem.

PW8, Sergeant Mirundi Wafula, received an assault report on 29/5/02 at about 6.30 p.m. Accused was one of the reportees. He was instructed to investigate the case. He visited the deceased in hospital. After the death of deceased is when he received information from the family of the deceased that the accused was the culprit. On 5/7/02, he received a club which was alleged to have been used in the assault. He said Mumo (PW7) and Maria (PW6) gave him the stick (club) which he produced in evidence as Exhibit 2. He later escorted the deceased's relatives to Kitui mortuary for purposes of identifying the body of the deceased before postmortem. He also took accused to a medical doctor for examination as to his mental status. In his unsworn statement in his defence, the accused denied that he ever killed his father or did anything to harm him. He recalled that the father had been served with tea by PW1 that morning as he took his tea. Thereafter he took his cattle to graze. He was later informed that somebody had assaulted his father. He confirmed that the father was injured, went in search of the assailant but to no avail. He made arrangements for his father to be taken to hospital where he was admitted and died on the 3rd day. His father was blind and he had been looking after him. He made arrangements for his burial and there was no allegation that he had caused the death till he heard of it in court. He said he loved his father.

Now, assessors that is the evidence that was adduced before this court. The key witness in this case is PW1. Consider whether she did identify the person she saw leave the house where the grandfather was assaulted. Was it the accused and if so, what is the motive behind the assault?

The accused raises an alibi in his defence. Does it displace the prosecution evidence?

Consider both the prosecution evidence and defence in its totality. Also bear in mind what I have pointed out earlier in this summary. Each of you should come up with their own verdict of guilty or not guilty. You are allowed to take as much time as you wish. If there is any clarification to be made, inform the court clerk so that I can come to open Assessors now retire to consider their verdict.

**R.V. WENDOH**

**JUDGE**

Dated at Machakos this 12th day of October 2005

Read and delivered in the presence of

**R.V. WENDOH**

**JUDGE**