



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA

CRIMINAL CASE NO. 14 OF 1999

REPUBLIC.....PROSECUTOR

V E R S U S

SAID MZURI BWANHAJI.....ACCUSED

R U L I N G

The trial of this case has been prolonged for various reasons.

On 14/5/2003 the trial started afresh because the earlier assessors disappeared.

On 14/5/03 the fresh trial commenced.

First witness testified that sometime in October he was in the garden with two other people Bekanda and Dzuya Mwalimu when deceased Dama Johana came by. He had small walking stick (witness identified a small stick in court). After exchanging greetings deceased proceeded on his journey.

Then a young man passed by with a heavy walking stick (witness identifies the heavy walking stick). He said he was called Said Mzuri. He said he was converted (born again Christian). He said they should follow what he tells them. He proceeded down the road through the garden. After 15 minutes he heard cries coming from the other side about 1 km away. On reaching there they found deceased lying in a garden of another person. Deceased had a cut in the head. They found the stick. There were other persons. They went to make a telephone call. The witness said he heard noises in the homestead of Dzuma Mwakivunga. He said he was injured by Said Mzuri. The police came. The witness and his colleagues did not go near the murder scene again. The matter was left in the hands of police.

The story of the accused started on 17th of October. PW.10 Mzuri Bwana in his evidence said that he is the true father of the Accused – Saidi Mzuri. On 17/10/96 he was at home with his wife Rehema the Accused's mother, and at about 7 p.m. the Accused who was residing with him and working in the shamba came home. From what Accused said the father thought Accused wanted to beat them as if the Accused's mind was not in order. The father and other persons wanted to tie up the Accused but the Accused ran away.

On the following day 18th at about 10.00 a.m. the Accused returned home with blood-stained clothes and a bleeding left hand injury. His shirt and trouser were with blood. He said he wanted the liver of the father and that of his mother to eat. The father got other persons who helped him to tie the Accused with rope and take him to Port Reitz for treatment for mental illness. However, he was advised to take him to Makadara (Coast General Hospital) which they did and left him there.

The father PW.10 thereafter travelled to Mariakani Police Station to write a statement that his son had killed, a conclusion he came to on seeing his son with blood and also hearing people say so. This visit was confirmed by police witness.

The events of 18th October, 1996 were reported by other witnesses. It is clear the Accused was seen in that morning of 18th walking with a stick firstly greeting witnesses in the garden and demanding people to convert to Jesus and threatening death if they fail by that evening. He was seen following the same path after the deceased. No-one saw him cutting or beating the deceased but the deceased body was found on a shamba in the valley and up the valley the Accused was seen beating Mr. Mwakivunga who sustained cut in the hand. It must have been after this incident that he went to his home and was arrested and tied up by his father and taken to Coast General Hospital on 18/10/1996.

The Consultant Psychiatrist Dr. Mwangombe testified that he examined the Accused on 19/10/96 and found him to have mental illness.

The total of evidence produced by the prosecution indicates that no direct evidence is available but that the circumstances surrounding the death of the old man DAMA JOHA MLEI pointed to the Accused as the man who inflicted injuries which caused his death as described by the pathologist.

It is shown that the Accused threatened death to other people he met that morning and he actually assaulted Mwakivunga at his house.

On the other hand, the Government Analyst report on blood grouping shows that Accused was found to be of Group O. The deceased of Group A which blood stained his walking stick. The witness Mwakivunga was of Group B and the knife was stained by Group B. This evidence is not conclusive. The evidence was that the clothes of the Accused when he was seen were stained with blood. These clothes were not examined for blood grouping. It will also be noted that the Blood tests took one year to be made.

Upon examining the prosecution evidence on the whole, especially of the father of Accused and of the Psychiatrist Dr. Mwangombe who said that on 19/10/96 when he examined the Accused, Accused was suffering mental illness. I have come to the conclusion that at the time the offence was committed on 18/10/96 the evidence points to the accused as the person who inflicted the fatal injuries. However, there is overwhelming evidence that the Accused was suffering from mental illness such as not to know that what he was doing he ought not to do.

Under Section 12 Penal Code I find him guilty of the offence charged with but he was insane.

I apply Section 166 Criminal Procedure Code and order the Accused to be kept in custody at Shimo-La-Tewa Prison. A report shall be made to President under the said provision. The Accused shall be in custody awaiting the President's Order.

Dated this 28th day of June, 2004.

JOYCE KHAMINWA

J U D G E

28/6/04

Khaminwa, J.

Esther – Court Clerk

Ms Mwaniki – H/B for Mwangi

Mr. Khatib – Defence

Accused present

Assessors present

Ruling read in open court in their presence.

JOYCE KHAMINWA, J.

The Assessors are discharged from Assessors duty for a period of 12 months
from to-day.

To-day's allowance to be paid.

JOYCE KHAMINWA, J.