

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL CASE NO. 117 OF 2003

REPUBLICPROSECUTOR

VERSUS

STEVEN SARONI MESHU.....ACCUSED

JUDGMENT

The accused was charged with murder contrary with Section 203 as read with Section 204 of the Penal Code.

The particulars of the charge are that on the 16th January 2003 at Burma Market in Nairobi within Nairobi Province he murdered **THOMAS MUCHUNGU WAMBUI**. The prosecution case is that the accused is a meat dealer and he used to bring his meat to Burma Market for sale.

On the material date the 16th January 2003 he brought meat to Burma Market to sell to the butchers. The deceased prevented him from selling his meat claiming that it had not been inspected and took it away from the accused. The accused demanded to be given his meat back by the deceased and claimed that the meat had been inspected at the slaughter house. He argued that the deceased had no business to prevent him from selling his meat on the ground that the same was not inspected since the deceased was not a meat inspector. A quarrel ensued which culminated into a fight.

They struggled and both fell down when they stood up, the accused picked a knife and stabbed the deceased on the thigh. The deceased was rushed to KNH for treatment but died while undergoing treatment. The matter was reported to the police and accused was later arrested and charged with this offence. These facts are not disputed. The prosecution witnesses PW 2 Lawrence Waitthaka and PW 3 Stephen Kirangu who were at the scene both testified that they witnessed when the deceased prevented the accused from selling his meat to the butchers claiming that it had not been inspected by the meat inspector. Both testified that they saw when the deceased took away the meat from the accused and when the accused demanded to be given back his meat, a quarrel ensued and they started fighting. They further told the court that they witnessed when the accused picked a knife and stabbed the deceased which caused his death. This is confirmed by PW 5 Dr. Jane Wasike who performed the post mortem on the body of the deceased. She formed opinion that the cause of death was due to stab wound on the thigh.

The accused **STEPHEN SARONI MASHISH** denied the charge in his defence. He told the court that on the material date he had brought his meat to Burma Market to sell to the butchers. But he was prevented from selling his meat by the deceased who claimed that the meat had not been inspected and took it away from him. When he demanded that the deceased do return his meat a quarrel ensued which culminated into a fight. They struggled and fell down. This attracted many people to the scene both the meat sellers and the butchers who started fighting. The fight was between the meat sellers and the butchers. He denied to have stabbed the deceased and that he did not possess a knife. He told the court that he was also attacked and injured and was rushed to the hospital for treatment.

The accused called one defence witness DW 2 Kasito Saire who is also a meat seller and who testified that he witnessed when the deceased prevented the accused from selling his meat. The accused denies to have stabbed the deceased but there is the evidence by PW1, PW2 and PW3 who state that they saw when the accused removed a knife and stabbed the deceased. But what was produced in court and was objected to was a Somali sword. A Somali sword cannot be described as a knife. The 3 eye witnesses all said they saw the accused remove a knife and stab the deceased. None of them says he saw the Somali sword.

The witness in a criminal case upon whose evidence it is proposed to rely should not create an impression in the mind of the court that he is not a straightforward person, or raise a suspicion about his trustworthiness, or do (or says) something which indicates that he is a person of doubtful integrity, and therefore an unreliable witness which makes it unsafe to accept his evidence.

NDUNGU KIMANYI V. R. 1979 KLR 282. The evidence also shows that the deceased was the aggressor. He prevented the accused from selling his meat and he actually took it away from him and when the accused demanded his money back he attacked him and a fight ensued. The accused was actually provoked and then attacked and he only acted in self defence. Provocation is established when there is a wrongful act or insult of such a nature as to likely when done to an ordinary person to deprive him of the power of self control and to induce him in the hit of passion and before there is time for the passion to cool, to insult the person by whom the act or insult is done or offered. In every criminal trial a conviction can only be based on the weight of evidence adduced.**OKETHI OKALE & OTHERS V. R. 1965 E.A. 555.** The burden of proof in criminal proceedings is throughout on the prosecution and it is the duty of the Judge to look at the evidence as a whole.

As stated earlier, the deceased was the aggressor. He prevented the accused from selling his meat on the ground that the same was not inspected. When the accused protested that his meat had been inspected at the slaughter house before it was released, the deceased snatched it from him. When the accused demanded that the deceased releases his meat the deceased attacked him and a fight ensued. The accused was a meat seller while the deceased was a meat purchaser. The fight culminated between the meat sellers and the meat buyers. The accused denied to have stabbed the deceased. According to the evidence of PW1, PW2 and PW3, they saw accused remove a knife from his pocket and stab the deceased. But what was produced in court as the murder weapon was a Somali sword which counsel for the accused objected to its production as the murder weapon since what was alleged the accused used to stab the deceased was a knife. There is no evidence that it was the accused who inflicted the injury on the deceased which caused his death.

Having looked at the evidence as a whole I am satisfied that the prosecution evidence is far below what is required to warrant a conviction in criminal law. The prosecution has not proved its case beyond any reasonable doubt as required to enable this court to convict the accused as charged.

The three assessors returned a unanimous verdict of not guilty and I do concur. Accordingly I find the accused not guilty of the offence charged and I acquit him.

Dated and delivered this 19th day of October 2004.

J.L.A. OSIEMO

JUDGE