



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAKURU
CIVIL CASE NO.48 OF 2002

REPUBLIC.....PROSECUTOR

VERSUS

JEREMIAH MWAI HINGA.....ACCUSED

RULING

The accused person **JEREMIAH MWAI HINGA** is charged with MURDER contrary to Section 203 as read with Section 204 of the Penal Code. That on 30th September, 2001, at Gituamba in Nyandarua District of Central Province murdered **SAMWEL GAITHO WAMBUGU**.

In brief the prosecution case is that the accused stopped **DAVID MAINA MWANGI, PW1**, hereinafter referred to as Maina. It was 10.30 pm on the day in question. He told Maina that he needed his help to lift a drunk man who was lying next to Maina's gate. On proceeding there, Maina saw that the man had a knife on his chest and was bleeding. He did not respond to his, Maina's calls. He then forced the accused to accompany him to Gituamba Police Post, about 400 metres away here they reported to P.C. NJAGI, PW6 and one P.C.MURITHI. Maina told the court that when he saw the accused that night, he noticed that he was hiding a panga or matchetti behind him. He demanded that he hides it in the bush before agreeing to proceed to the scene. Police later recovered it but it was not an exhibit. Dr. KAMAU, PW2 produced the Post Mortem report on the results of post mortem examination on deceased body which he carried out on 9th October, 2001. He found that the cause of death was cardio respiratory failure due to left haemapneumothorax due to sharp penetrating cut wound. He said the deceased left lung had collapsed due to the cut and that the aorta was severed at Level 4. The report was Police Exhibit 1. He also produced P3 form on the accused whom he certified fit to plead and to stand trial.

The other witnesses were PW3 and PW4 wife and son of the deceased who confirmed that PC. Njagi informed them of deceased death on the fateful night. PW5 PC. Irungu escorted PW4, Wambugu and one Macharia to Nyahururu District Mortuary for post mortem and identification of the deceased on 9/10/2001. PC. Njagi confirmed Maina's evidence to extent of his first report to them. In his evidence, PC. Njagi also stated that he investigated this case. He said that one PC. Murithi identified the knife which was Police Exhibit 3, as similar to one he used to borrow from the accused when they lived in neighbouring plots. PC. Murithi did not testify to confirm the information and to say how he identified the knife as the one the accused used to lend to him. To that extent, that piece of evidence was worthless first for being hearsay and secondly for being unsupported by PC. Muriithi.

At the time the prosecution case closed its case, there was no aota of evidence connecting the accused person to the deceased's death. It is true his behaviour on the fateful night was suspicious. He had told Maina that the deceased was only drunk and was lying down needing assistance to stand to his feet. That turned out to be false. He had not only stab wound with a knife in his chest and a cut on the forehead but he could not respond to calls. He was either unconscious or dead. The second thing about the accused was

he had a panga or machetti which he was hiding from Maina. Both facts are suspicious. However, they do not go to prove anything as far as the deceased's death was concerned.

On the knife, even if PC. Muriithi testified, his evidence may not have gone to the substance of the charge. Assuming he was able to positively identify the knife as the one belonging to the accused, that in itself is not sufficient to prove that the accused stabbed the deceased with it and caused his death. Without speculating on PC. Muriithi's evidence, the evidence before us is insufficient to prove the charge against the accused.

The prosecution had the duty to prove:-

i) That the accused had formed malice aforethought, i.e. an intention to cause injury or harm to the deceased.

ii) That he executed his said intention by Some act, in this case stabbing the Deceased in the chest with a knife, Knowing the stab wound would Cause the death.

No evidence was adduced from which the court can deduce or infer that the accused had formed the mens rea to stab the deceased and cause his death.

I find that the evidence before court does not meet the required standard for the charge of Murder or any other offence. Consequently, I enter a finding of not guilty against the accused person under Section 306(1) of the Criminal Procedure Code.

The accused person should be released unless he is otherwise lawfully held.

JESSIE LESIIT

JUDGE

Read, signed and delivered this 29th day of July, 2003.

In presence of Accused person.

Mr. Mutuku for State

Mr. Orege for Accused.

JESSIE LESIIT

JUDGE