



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL CASE No. 35 OF 2000

REPUBLICPROSECUTOR

V E R S U S

KATANA MWAGUDU.....ACCUSED

R U L I N G

The accused person Katana Mwangudu was charged with the offence of Murder contrary to Section 203 as read together with Section 204 of the Penal Code. It is alleged that he on the 22.3.2000 at Buguta Village in Taita-Taveta District of the Coast Province murdered Mwangudu Kaingu. The prosecution called seven witnesses. The first was Chali Benja the daughter-in-law of the deceased Mwangudu Kaingu who said that the deceased lived in his house in the same homestead with theirs. In the homestead also was the house of Ngala Mwangudu, and John Mwangudu who were brothers-in-law of the witness. Other houses in the compound belonged to the wives of the deceased. Early in the evening of the 22.2.2000 the deceased ate his meal in his own house after the same was cooked by Chali Benja in her house. She usually cooked for him and others. She also had retired to sleep in her house although her husband Benja was not home that night. In the early hours of 23.2.2000, there was a knock at the door of her house as if something had fallen in. She woke up and found the door open. She got frightened and ran to her brother-in-law, Ngala's house and informed him of the incident. Ngala came out and he went to check whether the old man, the deceased, Mwangudu Kaingu was well. When he came back, he said that he found Mwangudu Kaingu dead in his house. That night her husband Benja, Mche Mvula the 2nd wife of the deceased and Sosi Chali brother-in-law were away on a journey. This witness also testified that Katana Mwangudu the accused herein was the son of the deceased and also her brother-in-law. He lived away in another area called Kibaoni, several miles away. He used to visit the deceased once or so a month.

The second witness was Kwekwe Ndeka, was another daughter-in-law of the deceased Mwangudu Kaingu. She confirmed that in the evening of 22.2.2000 the deceased was well and after the evening meal she and PW.1, Chali Benja left him to sleep as they also went to sleep. That evening she and PW.1 slept in the same house until 1 a.m. when there was a knock at their door. They went out and reported to Ngala Mwangudu, their brother-in-law who went to check whether their old man Mwangudu Kaingu was well. Ngala came back and reported that he found that Mwangudu Kaingu was dead. He went to report to the Sub-Chief as the others remained at home. Soon the news spread and many neighbours came. Later the Area Councillor came followed by the Assistant Chief Nyale, whom Ngala had gone to call. It was then daylight on 23.2.2000. Later that morning at about 10.00 a.m., the Police came including the Scene of Crime Officers who took photographs. The Police took the body out of the house and later took it away. She knew the accused person Katana Mwangudu who used to come from time to time to visit and chat with the deceased cordially. The accused was not at that home on 22.2.2000 nor the next day.

Ngala Mwangudu gave evidence as the 3rd witness. He, with the deceased and others in the early evening of 22.2.2000 ate together and retired to sleep. PW.1 and PW.2 awoke him at about 1.00 a.m. to inform him of the knock at their door. He checked around the compound and realized that his father's house's door was ajar. When he entered and found a lantern on, he saw his father dead with his head on fire. He went and reported to Assistant Chief James Nyale who in turn went and reported at Rukanga Police Post. He confirmed that his brother Katana Mwangudu was not at home on 22.2.2000 and said that he did not know who killed or set his father on fire probably using paraffin.

John Mwangudu brought some tobacco for the deceased early in the evening of 22.2.2000 after the old man ate supper. Later in the morning hours he was informed of the father's death by Ngala. He confirmed the story of the other witnesses.

James Nyale the Assistant Chief received the death report from Ngala and reported it to the Police who came and started their investigations. He confirmed that he noticed that the body of the deceased had been burnt. He said he saw cuts on the neck. The stomach had been attacked by fire. He telephoned Voi Police Station. Later the Police came, took scene of crime photographs and took the body away to mortuary.

Chief Humphrey Kichengela arrested the accused Katana Mwangudu on 4.9.2002 as a result of what the accused told him. He did not say what it was. He handed him over to the Police.

The above is the evidence that was on the record when Miss Mwaniki who was prosecuting this case closed her case on the ground that she was not able to produce other witnesses she wanted to call. I have carefully considered the evidence on the record. From it there is no clue as to who killed the deceased Mwangudu Kaingu. There is no evidence suggesting that the accused had anything to do with his father's death. The evidence suggests that he lived cordially with the deceased. He used to come and visit him and chat with him once or twice in a month. The Chief who arrested him did not explain why he did so. No one complained that the accused killed the deceased. Furthermore, there is no evidence on the record suggesting that the deceased was killed as the cause of death was not proved. The doctor who performed the post-mortem was not called to show the cause of death. The investigating officer was not called to explain the reason why the accused was arrested. As the evidence stands, there is no evidence sufficient to put the accused on his defence and the charge must be dismissed.

The upshot is to order the accused released at this stage forthwith. It is so ordered. Assessors are discharged.

Dated and delivered at Mombasa this 5th day September, 2003.

D. A. ONYANCHA

J U D G E

Order

- 1. Assessors to be paid.**
- 2. Certified copy to State Counsel.**

D.A.ONYANCHA

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