



**Republic v Mata (Criminal Case 11 of 2019)
[2024] KEHC 1185 (KLR) (8 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1185 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL CASE 11 OF 2019
RB NGETICH, J
FEBRUARY 8, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

IBRAHIM KAMAN MATA ACCUSED

JUDGMENT

1. The accused Ibrahim Kaman Mata has been charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code. Particulars of the charge were that the accused on the 4th day of June, 2019 at Tangelbei Trading Centre, Tangelbei location at Tiaty East Sub-County within Baringo County murdered Kakere Todo.
2. The accused pleaded not guilty to the charge and the matter was set down for full trial where the prosecution summoned a total of 7 witnesses to prove of the charge preferred against the accused.

Prosecution Evidence

3. Pw1 one Wilson Terer from Tangelbei who is a village elder for Tangelbei testified that on 8th June, 2019 at about 9:00 p.m., he was at home when he received a call informing him that a young man had killed Kakerer the son of his brother at Tangelbei centre. On 18th June 2019, he went to Kabarnet Referral Hospital mortuary where he identified the body to the doctor who performed post-mortem.
4. Pw2 Musa Terter Wandika from Chepkalacha testified that on 18/6/2019, he was summoned by the DCI to go to Kabarnet Hospital mortuary where they identified the body of deceased Kakerer for post-mortem.
5. Pw 3 Julius Kambi Piry a retired Police Officer previously stationed at Tangelbei AP Post, testified that on 4th June, 2019 at about 9:00 p.m., he received a call from a lady who ran a hotel informing him that someone had been stabbed. He sent police officers to the scene. They confirmed that a person had been



- stabbed. He advised the officers to rush the victim to Tangulbei Mission Hospital. That he later went to the station where he found a young man who had gone to report and surrender himself for stabbing the deceased. They took him the next day to Nginyang Police Station and handed over to the OCS.
6. Pw4 Imbali Protus Shikote a Police Constable number 2018094772 at Tangulbei Police Station testified that on 4th June, 2019 at around 7:40 p.m., he was at the station when members of the public went to seek assistance with a vehicle to take a person stabbed to hospital. He informed his boss who authorized the driver to go and assist the victim. They were led by members of the public to the scene where they found the victim lying down crying in pain and could not utter any words. They took him to Tangulbei Catholic Mission Hospital. The next day at 7:20 a.m., they were informed that the victim had died. He said after arriving from hospital, a male by the name Ibrahim Kaman Mata went to the station seeking protection as he felt insecure having stabbed someone and they kept him in custody until morning when they escorted him to Kinyang Police Station as they felt Mata was not secure and he later recorded his statement.
 7. Pw5 Cheplungumo Lompirion from Tangulbei testified that on 4th June, 2019 at about 7:00 p.m., she was in her hotel when Kakerer who is a son to her co-wife arrived carrying meat. He requested her to fry the meat for him which had gone bad. She stated that she cooked ugali and Kakerer informed her he was going to look for onions and cooking fat. She stated that she proceeded with her activities of cooking vegetables and shortly, customers arrived and ate. She stated that Kaman, the accused arrived and borrowed a sufuria wanting to cook his meat but she told him she did not have enough firewood. She said accused went outside and she thought he had gone away. Other customers arrived. Shortly, she heard a loud cry outside from the deceased who was crying that he had been stabbed and when she flushed a torch on him, she realized his intestines were out and Kaman was holding a knife which had blood and Kakerer fell down.
 8. Pw5 said she screamed and asked Kaman why he had stabbed Kakerer. She said at the scene there was a sufuria with meat and her customers took off without paying her. She said she screamed until the police vehicle arrived at the scene and the victim was taken away. She stated that she did not realize how Kaman disappeared from the scene and that he left the knife with the meat at the scene. She said she had known the accused from childhood as he grew up in her home area. She identified the knife in court as the knife accused had at the scene. She said the knife remained at the scene until the following day when P.C. William went to pick it from the scene. She said she never saw the accused after the incident until the day he saw him in court.
 9. Pw6 was Dr. Wangari Wambugu, a Pathologist at Baringo County Referral Hospital for last 8 years holding Bachelors in Medicine and Surgery from Moi University 2005 and Masters in Pathology from the University of Nairobi, 2013. The witness stated that on conducting post mortem on deceased Kakere Todo on 17th June, 2019 at Baringo County Referral Hospital Mortuary, she found the body was pale and had injuries. On the abdomen, there was a stab wound on the lower right side, on the head, there was a healing wound on the front of face and a healing wound on right arm. That on internal examination, there was blood in abdomen hemoperitoneum – 1.5 litres and the right internal iliac artery had been cut. She concluded that the cause of death was bleeding due to penetrative injury following assault. She filled and signed the Post-mortem on 17th June, 2019 and produce as evidence – P. Exhibit 1.
 10. Pw7 one No. 236/26 IP Daniel Munguti, based at DCI Tiaty East and West Baringo County testified that on 5/6/2019 about 11:00 a.m., he was in the office at Nginyang Police Station when he saw Land cruiser of AP from Tangulbei. That they came with a suspect saying he had stabbed someone at Tangulbei. His name was Ibrahim Kaman Mata and the victim had been taken to hospital. He stated that the report was by Aps from Tungulbei who brought him around. He testified that on 6th



June, 2019, he brought him to Kabarnet to proceed with investigation and he was given 14 days. That he then prepared the file, visited the scene, recorded statement and brought accused to court. That Post-mortem was done by the doctor. He stated that he took the exhibit from the officers who visited the scene. That the witness was able to identify the knife which was given by the officers and produced as P. Exhibit 2. That after interrogation, he found that the accused Ibrahim Mata the accused before court stabbed deceased.

11. Upon the closure of the prosecution case, the court in ruling delivered on the 28th day of September, 2023 found that the prosecution had established a prima facie case against the accused to be placed on his defence.

Accused's Defence

12. On his defence, the accused gave sworn statement. He stated that he resides at Tangulbei and denied killing the deceased. He stated that on the 4th day of June 2019, he went to Kobwatoto river to harvest sand and he stayed there up to 5.00 p.m. when they looked for the employer to pay them and found him at a bar at Tangulbei and they were each given 500/=. He decided to drink alcohol with his colleagues and the deceased who was not among the people harvesting sand was drinking with other people across the river. He stated that they drunk up to 6.00/7.00 p.m. when they went to the centre to have their meat cooked at the hotel of one Cheplungumo where he told her he had his meat to be cooked and money.
13. He stated the lady did not have firewood; that he gave him a knife to cut the meat outside. He cut the meat and informed her that he was going to look for firewood. He said shortly after leaving the hotel, he heard the lady scream. He stated that he went back and found the deceased Kakerer lying down. He said as he was cutting meat there were many people and he never saw Kakerer arriving at the hotel and he did not know what happened to Kakerer. He stated that some of the people he found in the hotel were eating while others were singing and were drunk. He stated that he cannot recall all that happened because they were all drunk and he alone while cutting meat.
14. He proceeded to state that the deceased had his meat and each of them was eating his own meat. He stated he informed the police that he was not going to record any statement since he was drunk during the incident and did not know what happened. He denied having told the deceased not to cut big piece of meat. He said he cut himself as he cut the meat and he was taken to Ngingany. He said his finger prints were taken in Kabarnet and that he was given a pen and asked to sign on a paper; he stated that he did not know who killed the deceased; that he was drunk that day and it was dark.

Submissions

15. The defence counsel relied on submissions filed on the 10th day of July, 2023. Counsel submitted that PW 1 and PW2 only witnessed the post mortem and Pw3's testimony is hearsay. Further that on cross examination, PW5 Cheplungumon told him that there were people who were fighting over meat and had stabbed each other and the accused had a knife in his hand. Further that PW4 informed the court in cross examination that the place was dark and they were using torch lights and he could not establish whether the place was disturbed or not.
16. Counsel further argued that in cross examination PW7 the investigating officer confirmed that he did not dust the knife to ascertain who was holding the knife during the incident; that it was dark and he informed court that PW3 witnessed the incident but PW1 in his testimony denied the assertion. He stated that he was called while at the police station. That he did not say that he went to the scene.



- That the investigation officer was not able to answer critical questions pertaining to the investigations he carried out.
17. Counsel submits that how the deceased sustained injuries while fighting over the meat with the accused remain unanswered. That none of the prosecution witnesses witnessed the act. There is no evidence linking the accused to the charge of murder. That the investigations officer failed to conclusively assemble all the evidence that links the accused to the act and intention to commit the offence he is charged of.
 18. They submit that the prosecution witnesses were required to offer an explanation on how the deceased met his death. Those Sections 111 (1) and 119 of the Evidence Act provides as follows:

111 (1) When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any exception or exemption from, or qualification to, the operation of the law creating the offence with which he is charged and the burden of proving any fact especially within the knowledge of such person is upon him:

Provided that such burden shall be deemed to be discharged if the court is satisfied by evidence given by the prosecuting, whether in cross-examination or otherwise, that such circumstances or facts exist:

Provided further that the person accused shall be entitled to be acquitted of the offence with which he is charged if the court is satisfied that the evidence given by either the prosecution or the defence creates a reasonable doubt as to the guilt of the accused person in respect of that offence."
 19. The defence counsel submitted that the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.
 20. Counsel submitted that the only reason why the accused is on trial is because he was with the deceased fighting over meat but how the deceased sustained injuries has not been properly shown by the prosecution and the Prosecution's witnesses failed to fill the glaring gaps.

Analysis And Determination

21. The accused is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code which provide ingredients of the offence as
 - a. proof of death, the cause of that death,
 - b. proof that the death was due to an unlawful act or omission on the part of the suspect and
 - c. that the unlawful killing was with malice aforethought.
22. From the evidence adduced herein, there is no dispute that the deceased died. This was confirmed by all the prosecution witnesses who testified that the deceased died due to stab wounds. This was confirmed by PW 6 Dr. Wangari Wambugu a Pathologist at Baringo County Referral Hospital who performed post mortem examination on 17th June, 2019 and formed opinion that the cause of death was bleeding due to penetrative injury following assault. He produced a copy of the postmortem report as exhibit in court. The first ingredient was therefore proved beyond reasonable doubt.
23. On whether the death was caused by an unlawful act or omission by accused, PW5 the owner of a hotel testified that on 4th June, 2019 at about 7:00 p.m. accused had gone out of the hotel, she heard a loud cry from the deceased who was shouted crying that he had been stabbed and on flashing her torch, she



realized the deceased's intestines were out and saw accused holding a knife which had blood and that deceased fell down. She said she screamed and asked the accused why he had stabbed deceased. She said when she moved closer, she found that the deceased had his intestines out and accused was still holding the knife and but fled the scene shortly thereafter leaving the knife at the scene. Accused was seen at the scene with a knife. She saw accused standing at the scene while still holding a blood-stained knife before he dropped the knife and fled from the scene. Post mortem produced in court confirmed that the deceased died as a result of stab wounds. From the foregoing, evidence of PW5 places accused at the scene.

24. The evidence of PW5 was corroborated by evidence of PW4 who testified that the accused surrendered himself to police and reported that he had had stabbed someone. From the foregoing, I am satisfied that the prosecution proved beyond reasonable doubt that it was the accused who unlawfully caused the deceased's death.
25. Finally, on the question of whether there was malice aforethought on the part of the accused, Section 206 of the Penal Code defines Malice aforethought as follows:

“206. Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances—

- (a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;
- (b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;
- (c) an intent to commit a felony;
- (d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.”

26. The Court of Appeal in the case of Joseph Kimani Njau v R (2014) eKLR, held as follows:

“Before an act can be murder, it must be aimed at someone and in addition, it must be an act committed with one of the following intentions, the test of which is always subjective to the actual subject;

- i) The intention to cause death;
- ii) The intention to cause grievous bodily harm;
- iii) Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from his acts, and commits those acts deliberately and without lawful excuse with the intention to expose a potential victim to that risk as the result of those acts.



It does not matter in such circumstances whether the accused desires those consequences to ensue or not in none of these cases does it matter that the act and intention were aimed at a potential victim other than the one succumbed.....”

27. In view of the above, the prosecution is required to prove that the accused had an intention to cause the death of or do grievous harm to the deceased and also prove that he had the knowledge that the act or omission causing the death of the deceased was probably likely to cause his death or grievous harm. From evidence adduced, it is not disputed that the incident occurred after the deceased and accused fought in PWS’s home where they were drinking alcohol. It is not also in dispute that the two were drunk at the time of the incident. There is no doubt that the minds of both were impaired as a result of consuming alcoholic drink. They fought while in the process of cutting meat at the hotel and the accused had a knife which he used to stab the deceased in the fight. In my view, the accused did not plan or intent to kill the deceased but stabbed him in the heat of the moment. He is therefore guilty of the offence of manslaughter.

28. Final Orders:

1. Accused convicted of the offence of Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.
2. Right of appeal 14 days.

JUDGMENT DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 8TH DAY OF FEBRUARY 2024.

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RACHEL NGETICH

JUDGE

In the presence of:

Mr. Kipkulei for Accused.

Ms Ratemo for State.

Accused present.

Elvis & Momanyi – Court Assistants.

