



REPUBLIC OF KENYA



**Republic v Martin (Criminal Case E007 of 2020)
[2023] KEHC 2939 (KLR) (24 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2939 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE E007 OF 2020**

A. ONG'INJO, J

MARCH 24, 2023

BETWEEN

REPUBLIC PROSECUTION

AND

PAPA BOUTROS MARTIN ACCUSED

JUDGMENT

1. The accused Papa Boutros Martin is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*.
2. Particulars are that the accused on the 25th day of September 2020 at Mrima Primary School in Likoni Sub-County within Mombasa County, murdered Hussein Mwakovi Daniel. Prosecution's case was that the accused person herein went to report that his mobile phone had been stolen but it turned out that he had stabbed and killed the person he alleged had stolen his phone.
3. PW 1 testified that he got a report that his brother had been stabbed to death. He got the report on September 25, 2020 from Abdalla Omar and Joseph Allan Kilonzo. He said he found the deceased lying in a pool of blood near Mrima Primary School and was already dead. He made report to police by phone call that his friend Okanga informed him that a person who went to take tea in his hotel in the morning was armed with a knife and when he inquired he said he was looking for a young man who stole his phone.
4. That the person later went back to the hotel and told Peter Okanga he found the person who stole his phone and he was going to report to the police that the person wanted to beat him. That PW 1 proceeded to police station on Ramadhan's motorbike and on the way met the accused who was suspected to have stabbed the deceased and Peter Okanga identified him.



5. That the suspect was known to PW1 & they convinced him to go back with them to the police station where he was placed in cells and police officers visited the scene where photographs were taken and body collected and taken to Coast General Hospital Mortuary for preservation and postmortem.
6. PW 1 said he was not aware of any differences between the accused and the deceased. PW 1 said that the short trouser the accused had on the day he was arrested had blood stains – EXP. 3 but the knife used to stab the deceased was not recovered.
7. PW 2 Peter Okanga testified that when the accused went to his hotel on 25/09/2020 he picked a cup and served half cup of tea and one mandazi which he took while standing. That when he was told to sit PW 2 saw accused produce a knife which he placed on the table.
8. That when PW 2 inquired why he had the knife the accused told him that 2 young men went to his house and while one held him the other stole his phone and that he knew one of them. That the accused said if he found them he would either be shown where his phone was or he would tear apart the intestines of the person who stole his phone.
9. That the accused left shortly before 8.00am and after he had returned and pass to go to the police station a lady known as Mdogo a fish vendor went and reported to PW 2 that Mteso had stab Mulu's brother.
10. That PW 2 and Ali went to call Mulu as his phones were not going through but found that he had left for the scene. That they returned to the scene and found Mulu and together with Ali proceeded to the police station to report. That on the way to the police station at Bethania they saw Mteso the accused person herein coming from the police station direction and PW 2 identified him to PW 1. That they followed him and convinced him to go with them back to the police station. That the police went and collected the body which was taken to the mortuary. PW 2 said that the accused was wearing short trouser whose colour he could not remember.
11. PW 3 Mike Kibwana testified that on September 25, 2020 he was at home cleaning when he heard commotion and someone was crying that they were being killed and calling for help. He said that he heard the cry and a sound of someone being hit against the wall and he got out and found 2 people struggling while one was holding a knife. He said the deceased was tall and the person they were struggling with was short. That he restrained the person who had knife from stabbing the one they were struggling with. He said the person who had knife was wearing jeans short trouser and he was enraged that he had been restrained from stabbing his opponent.
12. PW 3 said he had to use a lot of force to separate them. That people who were called to help feared the person with knife and he pinned the deceased to the wall and when he managed to disengage the accused from the deceased he saw blood on the deceased T-shirt and the deceased fell down. That after stabbing the deceased the person with knife slipped away when members of public gathered and said he was going to report to police. PW 3 said the assailant went away with the knife.
13. PW 3 went to report to village elder but didn't find him. That when he returned to the scene he found that the deceased was already dead. A report was made to police who collected the body. PW 3 recorded his statement at the police station. PW 3 said that the fight lasted about 3 minutes and he intervened for about 2 minutes. He identified the T-shirt the deceased was wearing and the jeans short trouser the accused was wearing – EXP. 1 & 3. PW 3 identified the accused as the person who had the knife. PW 3 said he picked a stone to threaten the accused who wanted to stab the deceased as he also feared. He said it was after he separated the accused from the deceased that the deceased who had been pinned against the wall by the accused fell.



14. PW 4 Government Analyst Irene Furaha Mwaringa produced a Report – EXP. 7 in which she said the DNA profile generated from the blood stains on the accused persons short trouser matched the DNA profile generated from the deceased person’s blood.
15. PW 5 Cpl Emanuel Kondo processed photographs taken at scene of crime by CPL Nyamai and he certified them for production as exhibits – EXP. 9 & 10. PW 6 Dr Nizla Ali produced postmortem report prepared by Dr Mohammed who conducted postmortem on the body of the deceased and concluded that he died as a result of internal exanguination – massive loss of blood – secondary to stab wound to the heart- EXP. 2.
16. Peter Mogaka, PW 7 investigated the murder & preferred charge against the accused. PW 7 said the accused went to the police station to report assault after he had stabbed the deceased.
17. When accused was placed on his defence he gave sworn statement and said that the deceased was his neighbour and that on 25/09/2020 he went to buy mandazi so he could use in taking his breakfast. That on his way to work he met a man who had stolen from him and he told him to return his phone. The accused said he bought the phone at Kshs 22000/= . That the person who had stolen his phone threatened to kill him for reporting to the police.
18. The accused said the man had a sack which he threw down and produced a knife and approached to stab him but he held his hand and they started struggling. He said the person was stronger than him and he fell down. That the person went over him with a lot of force and fell on the knife which stabbed him and the accused managed to escape and went straight to the police station and reported and he gave the OB No for theft of his phone.
19. That when he went to the crime office and found Mr. Ochieng who was investigating the case of theft of his phone was not in, he waited for 15 minutes and then decided to go to his brother-inlaw and report what had happened so he could call his wife. That at Corner Police near Bethama he met the brother of the deceased in company of a boda-boda rider and when he approached them they told him to go back to the police station. That he boarded their motorbike and returned to the police station where he learnt the person had died. He said he was placed in cells for 3 months and taken to prison remand on December 16, 2020.
20. Accused said he had never quarreled with the deceased. He said the deceased used to go to his house and they could eat together as they are neighbours. That whenever the deceased borrowed 20/= from him to buy chapatti he could give him. The Accused said that the deceased was like his child but that he was a drug addict and when they met he was under influence of drugs and that is why he responded and reacted in the manner he did.
21. The accused admitted that Peter Okanga – PW 2 was his neighbor and that he usually fetches water from his place. He denied having gone to take tea at PW 2’s hotel on the material morning. He admitted having told PW 2 that his phone was stolen on September 23, 2020. He said he also told PW 2 that he knew one of the people who stole his phone. The Accused said he used to charge his phone at PW 2’s place.

Analysis and Determination

22. In consideration of the evidence for the prosecution and the defence and in consideration of the submissions by the defence dated September 26, 2022 the issues for determination are:
 - a. Fact of the death
 - b. Cause of death



- c. Whether the cause of death was committed by the accused
 - d. Whether the cause of death was actuated with malice aforethought
23. The fact of death of the deceased is not indispute, Hussein Mwakavi Daniel died as a result of a stabbed wound to the heart according to Dr Mohammed in the postmortem report produced as Exhibit No 2.
 24. The fact of murder and the cause of murder is not in dispute as the evidence of the prosecution is clear that indeed the deceased died following massive loss of blood secondary to stab wound to the heart. The stab wound was not accidental and it was not self-inflicted. The same was caused by an unlawful act.
 25. PW 2 said the accused had a knife on the material morning and when he inquired why the accused was carrying a knife the accused said that he knew the person who stole his phone and he was going for him and it was either his phone was to be produced or the person would carry his intestines on the hands. He left and returned after a short while and said that the person who stole his phone wanted to beat him and that he was going to report to the police. He didn't tell PW 2 that the person who stole his phone had fallen on a knife and was stabbed.
 26. PW 3 heard a distress call from someone who was being hit against the wall to his house and oncoming out he found the accused had pinned the deceased against the wall and when he tried to stop the accused from assaulting the deceased the accused was very enraged and aggressive. PW 3 said he used a lot of force to separate them and that it is the accused who had a knife with one hand and pinned the deceased to the wall with another hand.
 27. That by the time he managed to separate the accused from the deceased the accused had already stabbed the deceased and the deceased who had been pinned to the wall fell. He said the accused then slipped away when members of public started gathering.
 28. PW 2 said that a lady who sells fish went to ask if he had alternative number for PW 1 as his brother had been stabbed dead by Mteso the accused herein. PW 2 & PW 3 confirm that it is the accused who had a knife and it is the accused who stabbed the deceased on allegations that the deceased and another had stolen his phone. The accused didn't question PW 3 as to who was the aggressor because his version of the events that took place on that day was an afterthought.
 29. PW 4 the Government Analyst analyzed the accused person short trouser and generated DNA profile from the blood stain on the said trouser and found that it matched the DNA profile of the deceased which was generated from deceased blood sample. The accused was therefore properly identified as the person who inflicted the injuries that led to the deceased death.
 30. Whether the accused was actuated with malice and aforethought his evidenced by the weapon he used and the part of the body that he aimed at i.e the heart which is the vital and delicate organ. The accused person planned and executed his plan to cause grievous harm and/or kill the deceased and efforts by PW 3 to restrain him from inflicting injuries on the deceased were not heeded.
 31. This court finds that the offence herein was premeditated and the accused was actuated with malice and aforethought when he stabbed the deceased to death. The prosecution has proved the offence of murder beyond all reasonable doubt and the accused person is found guilty and is convicted.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 24TH DAY OF MARCH 2023

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of:-



Ogwel- Court Assistant

Accused – Present in person

Ms. Ayieko Advocate for Accused

Mr. Were Advocate hold brief for Mr. Ngiri - for State

HON. LADY JUSTICE A. ONG'INJO

JUDGE

MARCH 24, 2023

Mr. Ngiri

We have no records. He may be treated as 1st offender.

Mr. Were Advocate

I pray for copies of judgment to be issued.

Mr. Ngiri

I pray that copy of judgment to be issued to us.

Order

Mention – April 13, 2023 for Victim Impact Statement mitigation and sentence before Judge Mutai. Copies of judgment to be supplied to defence and prosecution.

HON. LADY JUSTICE A. ONG'INJO

JUDGE

MARCH 24, 2023

