



**Republic v Nasir (Criminal Case 21 of 2019)
[2023] KEHC 1703 (KLR) (9 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 1703 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE 21 OF 2019**

**A. ONG'INJO, J
MARCH 9, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

AMANI MOHAMED NASIR ACCUSED

JUDGMENT

1. The accused Amani Mohamed Nasiri is charged with the offence of murder contrary to Section 203 as read with Section 204 of the *penal code*. Particulars are that Amani Mohamed Nasiri on the September 17, 2019 at Matopeni area in Kisauni Sub-County within Mombasa County murdered Rama Bati Lewa.
2. The prosecution's case was that the deceased used to work for the accused and that on September 17, 2019 in the evening PW 1 Samson Mwatela said that when he alighted at Waswahilina stage in Matopeni he found his father the deceased was lying outside the accused person's shop and he was bleeding from the ears & nose.
3. That on inquiry he was told that it is the accused who had hit him. That he took the deceased to Coast General Hospital and he was admitted but died at 5.00am the following day. He said the deceased was not talking and did not tell him what happened.
4. PW 1 said he & his brother Chuvi identified the body of their father for postmortem and later the body was released to them for burial. PW 1 said he did not witness the accused beat the deceased. He said he arrived at the scene at 7.00pm and found his father bleeding for ear and nose.
5. PW 1 said that he used to get reports that accused had the habit of beating the deceased but they didn't report to police. PW 1 said that the father was seriously injured and he was not able to talk until he died. That when the father died he went to report to police at Mjambere Police Station. He said he could not confirm that the accused had the habit of beating his father.



6. PW 2 Dr Julius Sango from Coast General Hospital produced postmortem report in respect of the body of Rama Bati Lewa the deceased herein prepared by Dr. Abdul Rahman Said. Dr. Abdul Rahman Said was of the opinion that cause of death was severe traumatic head injury secondary to blunt trauma to the head.
7. In cross examination, he said that the police report indicated that the deceased was slapped and he fell and started bleeding. He also said the deceased had a cut on the ear. He said the fall must have resulted into the injuries. He said the deceased also had a swelling on the scrotum but that was a condition one could live with and cannot affect mental health.
8. PW 3 Cpl Joel Owiti the Investigating Officer from Nyambere Police Station testified that the initial Investigating Officer CPL Opondo had since died and he took over the matter. He said from the statement recorded by the late CPL Opondo the murder took place on September 18, 2019 following a scuffle between the accused and his employee concerning sale of charcoal and that the accused slapped Rama Bati and he fell down.
9. That accused rushed the deceased to hospital using a tuktuk and he was admitted but died the following day at 3.00pm. That 2 witnesses recorded statements and preferred charge of murder against the accused.
10. PW 3 said that there was no witness to the murder. He said that the deceased had been employed by the accused for more than 20 years and that there was no difference established between them prior to date of offence.
11. The accused when placed on defence gave sworn testimony and called 2 witnesses who gave account of what transpired on September 18, 2019. The accused said the deceased was drunk at 10.00am and that he differed with a customer and started quarrelling with him. That the deceased then left to go to the market and returned at 6.00pm. That by the time the deceased returned he was not at the charcoal store. He said when the deceased caused a scuffle at the store in the morning he slapped him and the deceased left. He said the deceased did not fall when he was slapped and he didn't return the slap.
12. The accused said that he continued working upto 4.00pm when he went home for lunch. That while at home he received a call from his employee Tish who told him the deceased had fallen at his place of work. That he rushed back to go and organize for a tuktuk to take him to hospital. That he also contacted his family members and the deceased's son assisted him to take him to hospital. That after the deceased had been admitted he went back to close his business. That the following day at 6.00am, he got a phone call that his employee had died.
13. That the family of the deceased alleged he had killed the deceased and led police to go and arrest him. The accused person said the deceased was a habitual drunkard.
14. PW 2 Samson Bandari Mbaru said that he had known the accused for about 7 years as they were neighbours at their place of business. He said that on September 17, 2019, the accused and the deceased who worked together had a scuffle. That they exchanged words and moved upto his desk where the accused suddenly slapped the deceased. That he separated them and the accused went back to his place of work. He said that when he closed at 6.00pm the accused and the deceased were not in.
15. DW 2 Churchil Kisa Kivo testified that he was a loader. He said he had known the accused for 20 years. He said he was offloading goods from a bus at Swalina stage at 6.00pm near accused persons store when he saw the deceased fall from tyres on which he was sitting. He said the tyres were about 2.5 to 3 feet high. That when he rushed to where the deceased was he realized he was drunk. That the deceased was restless and he turned him and placed a manila bag to support his head. He said when the deceased fell



he was foaming from the mouth and was kicking. That many people responded. He said the accused was not in by then. He said he is the one who called the accused and informed him the deceased had fallen. That he accused came after about 30 minutes and took the deceased to hospital. He said that before they could go and visit Rama in hospital they were told he had died.

16. From the evidence on record the issue for determination is whether the prosecution has proved the offence of murder against the accused. The fact of death and the cause of death is not in dispute. Dr Abdulrahman Said found scalp haematoma on the head & bruises. There was dorsal skull fracture; massive subdural haematoma and increased intracranial pressure and brain evidence. He said there was traumatic brain injury.
17. The Investigating Officer did not find an eye witness and the accused person and his witness say that by the time that the deceased fell near his store he was not in the store and that the slap on the deceased in the morning did not make him fall. DW 2 attributed the deceased fall from tyres stack about 2.5 to 3 feet to his drunkenness.
18. This court finds that there is completely no evidence that can connect the accused directly or indirectly to the death of the deceased. In the circumstances the accused person is found not guilty and is acquitted under Section 210 of the [Criminal Procedure Code](#).
19. Orders accordingly.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,
THIS 9TH DAY OF MARCH 2023.**

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of: -

Ogwel- Court Assistant

Mr. Ngiri for the Respondent

Accused - present in person

Mr. Mukanzi Advocate for Accused

