



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO.9 OF 2019

REPUBLIC..... PROSECUTOR

-VERSUS-

ANTONY MUNYONYO KARANDI ALIAS MUCHUNGAJI.....ACCUSED

JUDGEMENT

1. The accused **Anthony Munyonyo Karandi alias Muchungaji** was charged with the offence of **murder contrary to Section 203 as read with Section 204 of the Penal Code**. Particulars are that on the 3rd day of January 2019 at Kambi Mahindi Trading Centre in Gilgil Sub-County with Nakuru County jointly with others not before court murdered **Kennedy Ondieki Omwega**.

2. The accused pleaded not guilty to the charge and the prosecution availed five witness to prove their case.

PROSECUTION CASE.

3. PW1 **Abraham Nyandika Ondieki** a son to the deceased who is aged 13 years testified that on 2nd February, 2019, he was at home and at around 7.30pm he was with his late father **Kennedy Ondieki Omwega** and brother **Jackson Nyangau**, then his father left to visit the neighbor by the name **shosho**.

4. He testified that shortly after his father left them, they heard screams and he decided to go with his brother to see what was wrong. He said on arrival at the scene, he saw 5 young men beating his father; that they had knives, spears and rungu. He mentioned the names of the five men he saw as **Kores, Tumate, Kabarondo Ngweta** and **Muchungaji**.

5. He further stated that he knows **Muchungaji** so well as he was herding sheep in their farm for over 5 years. He said he was able to identify them through the use of the moonlight and that he saw them remove the deceased's clothes.

6. PW1 further stated he left the scene with his brother after being threatened and went to sleep at **Kanini's** house and the next morning, they found their house locked from outside with a padlock and on opening, they saw the late father lying dead on the bed. They went to inform their brother **Kevin** who went to report the matter to the police. While in court PW1 identified the accused in the dock as one of the person's involved in beating the deceased. He said the accused is called **Muchungaji**.

7. On cross examination, PW1 stated that he saw the accused who is called **Muchungaji** hitting his father with a rungu and he saw them remove his father's clothes and also removed money from his pocket and counted. He said his father was talking but in low voice and he was being beaten as he was being pulled to the dam.

8. On reexamination PW1 said his father was not drunk but had taken little alcohol and **shosho** was not among the people beating his father. He said there was moonlight which enabled him see the accused and that he saw accused take his father's mobile phone and that he saw accused strip the deceased open.

9. PW2 **JN**, a 12-year-old boy who is also the son of the deceased and a brother to PW1 testified that he recalls the events of 2nd February, 2019, as he was home with PW1, when they heard screams from the old lady's house where their father had gone to inquire why she was calling him a thief.

10. He testified that together with PW1, they proceeded to shosho's house only to find the deceased being beaten by a mob of 5 people. He said it was at around 7.30 pm and that he was able to identify the 5 people as they were their neighbors; he gave their names **Ngiret, Kabarondo, Kores, Muchungaji** and **Tumate**. He said he saw them using knives, spears and rungu. He stated that they found the deceased in the house dead the next morning. He positively identified the accused as one of the 5 people who were beating his father. He

said they went to sleep in Mama Kanini's house because the people beating their father threatened to go for them also.

11. However, on cross examination PW2 said he never saw accused who is known as **Muchunganji** beating his father. He confirmed that **Muchunganji** is the accused herein. Further on reexamination, PW3 said the accused did not beat his father and that he never saw him with any weapon. He said the accused was on the side standing. His father said the accused never talked but it is one **Kores** who talked to them

12. PW3 **Doctor Anthony Wainaina** who works at Nakuru Level 5 Hospital testified that he performed postmortem examination on the body of **Kennedy Ondieki Omwengi** the deceased herein on 7th February, 2019. He concluded that the deceased died of acute severe head injury caused by blunt force trauma.

13. PW4 **John Lokitela Erika**, who is a village elder aged 55 years old testified that on 2nd February, 2019 at around 9. 00p.m to 10.00p.m. neighbours called him to inform him that there was somebody on the road who had been beaten. He said he proceeded to the scene and found a person lying down naked. He said the person was still talking though his voice was low but he was raising his hand. He learnt that the person was **Ondieki** and he used a torch to confirm that he was the one. He informed the Elementaita Police who visited the scene.

14. On cross examination, PW4 confirmed that the deceased had been beaten and left naked. He said the deceased lay down on the ground on the road and was in a bad condition; that he had injuries all over up the head; was bleeding from the head; he confirmed seeing blood oozing from the head.

15. PW5 **Peterlis Okumu Obade No.79105** a police officer attached to Elementaita Police Post testified the accused was arrested after being positively identified by the children of the deceased. On cross examination he confirmed that he was present during the postmortem and confirmed that the deceased had head injuries.

16. In his defence the accused choose to give sworn statement without calling any witness. He testified that he lives in Oljorai where he has lived for over 10 years, and worked at Kampi Muhindi as a herdsman. He testified that on the night of 2nd February, 2019, he was standing next to his motorbike when he heard screams from **Jecinta's** house and saw around 30 people coming from her homestead. He said he saw a police patrol vehicle at around 8.30pm, and that he never saw the deceased on that day, neither did he see the person the crowd were calling a thief.

17. The accused denied ever touching the deceased nor being involved in the mob beating. He testified that the people mentioned as accomplices are not his friends and he only heard their names in court. He testified that PW5 was not a credible witness as he recorded his statement in the year 2014; he further testified that PW2 is the only credible witness as he said he saw him with a motorbike at the scene. He further testified that he never recorded his statement at the police station and was arrested on 3rd February, 2019 when one of the sons of the deceased identified him as one of the suspects.

18. Both the defence counsel and state counsel choose to rely on the evidence on record and not file any written submissions.

ANALYSIS AND DETERMINATION

19. I have considered evidence adduced by the 5 prosecution witnesses and accused person's defence, whether the prosecution has proved its case beyond reasonable doubt.

20. There is no doubt that the deceased died as a result of injuries inflicted by several people. PW1 and PW2 who are both sons of the deceased gave the number as about 5 men. The two boys said their father had gone to an old lady's house called Shosho to ask her why she was saying he was a thief and shortly they heard screams from the old lady and on rushing to the place where screams were emanating from they found their father being beaten.

21. What I consider to be in issue is whether the prosecution sufficiently proved that the accused was one of the people who beat the deceased inflicting fatal injuries. The prosecution availed two eye witnesses PW1 and PW2 who are both sons of the deceased. PW1 stated that he saw the accused whom he named **Muchunganji** beat his father with a rungu. While on the other hand on cross examination of PW2 who was at the scene together with PW1, he said he never saw the accused beat his father. On further cross examination he said the accused never beat his father and that he saw him standing on the side and never talked. On reexamination by prosecution, he confirmed that accused never beat his father.

22. The two witnesses though being at the scene at the same time adduced contradictory evidence. Evidence of PW2 do not point at active participation in the crime of murder by accused neither did he play a role of aiding the commission of the offence. The contradiction in the above evidence raises doubt in the mind of the court. The standard of prove in criminal matters is prove beyond reasonable doubt and if there exist some reasonable doubt, a conviction if entered will be unsafe; the doubt goes to benefit the accused by entitling him acquittal.

23. From the foregoing I find that the prosecution have failed to prove beyond reasonable doubt that the accused is one of the people who participated in murdering the deceased herein.

24. FINAL ORDER

1. Accused is acquitted

2. Accused is hereby released unless lawfully held.

JUDGMENT DATED, SIGNED AND DELIVERED VIA ZOOM AT NAKURU THIS 3RD DAY OF MARCH 2021

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RACHEL NGETICH

JUDGE

In the presence of:

Schola/Jeniffer - Court Assistant

Rita Rotich State counsel

Ms Sabaya counsel for the Accused