



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

HIGH COURT CRIMINAL CASE NO. 13 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

EDWIN MUNENE MARANGU.....ACCUSED

JUDGEMENT

1. **Edwin Munene Marangu**, the Accused herein, is charged with **murder** Contrary to **Section 203 as read with Section 204** of the Penal Code. The particulars as per the information presented are that, on the **17th November, 2017**, at Mpiani Village, Chogoria within Tharaka Nithi County, the Accused herein, murdered one Jaspheer Maranga, his father (deceased).

2. For the record, the Accused pleaded not guilty to the charge. The prosecution presented nine witnesses to prove their case. Going by the evidence presented by the prosecution, the prosecution's case is hinged on circumstantial evidence. The circumstances are based on the conduct or the history of the Accused herein, on how he had related with his parents in the past, prior to the incident, and the fact that the Accused person was the only person who was with the deceased at the material time before the deceased was found lying in a pool of blood, dead.

3. The Prosecution's main witness was **Jedidah Cianjoka Marangu**, (Prosecution Witness 1), the mother and wife to the Accused and deceased respectively. She told this court that, the Accused was the only child staying with her and the deceased at their matrimonial home, the scene of crime. She added that, as parents, their relationship with their other children was fine, but it was different with the Accused person adding that, the Accused abandoned his studies midway due to drunkenness. She further testified that, the Accused had previously threatened her and the deceased, his mother (Prosecution Witness 2), and that he would often demand money with menaces and became hostile, if the money was not given to him. She recalled an incident, when the Accused went home and demanded for money and when the request was declined, he became violent and started breaking utensils and furniture. She also recalled another incident when the Accused went home at night and demanded to be given food and before she gave him food, he held her by the throat and threatened her with a knife. She further stated sometime, in December 2003, the Accused went home drunk at night and woke up the deceased and the mother and that, because they feared him, they declined to open the door but, their refusal met a violent protest by the Accused who began breaking the door and windows forcing them to scream attracting neighbours who came for their rescue.

4. She added that, attempts by the Area Chief to take action against him for constant trouble were always stopped by the deceased whose love for his son (Accused) made him hoping against hope that he would change. She testified that, their other children left home and went to live elsewhere due to hostility of the Accused.

5. The witness (Prosecution Witness 1) further testified that, on the material date, she went to weed a farm which was three kilometers away from home. She stated that, she left the deceased with the Accused alone at home and that when she returned at around 7:30pm, she was surprised to find lights in her home off, something that she said was unusual. As she entered the house, she noticed a lot of blood in the kitchen and that the trail of blood headed to the main house. She followed the trail along the corridor to the main house, where she added that she found her husband lying on the floor dead and naked. Shocked at the sight, she testified that she quickly and silently rushed to the house of a brother to the deceased named Nabea Nabea (Prosecution Witness 2), who lived not far from where they lived. She stated that, he found Nabea and his wife Justa Ndiga (Prosecution Witness 4) and together, they headed back to the scene. She added that, she was careful not to wake her son (deceased) because she feared that she was going to be the next to be killed.

6. **Nabea Ndiga** (Prosecution Witness 2), corroborated the evidence of Prosecution Witness 1 and told this court that on the material date at around between 7 and 7:30 pm, Prosecution Witness 1 went running to their home and told them that the deceased was dead.

They rushed to the deceased's house which was next to theirs and found blood in the kitchen, the verandah and the window leading to the bedroom where they found the deceased lying dead on the floor. He added that the deceased, his brother was lying on his back completely naked adding that there was no blood where he was lying. He added that he was so shocked and fearful that attacker was lurking around, he quickly rushed back to his house and woke up his son named Martin and sent him to go and call the Police as he frantically made calls to his two brothers.

7. He recalled earlier that during the morning hours of the material date, his brother (deceased), had gone to his house and that they together went to sell their respective milk and they went back home. He added that, at around 1p.m the same day, the deceased went back to his house and collected water because he said that his tap was dry at the that time. He added that the deceased collected some water and was to come back for some more, but he was surprised when he failed to go back for more water and kept asking his wife why the deceased had not gone back for more water as expected.

8. The Witness (Prosecution Witness 2) also testified that, the Accused never related well with the deceased (his father) and corroborated the evidence of Prosecution Witness 1 that at one time, he broke all the windows and the doors of their house when the parents declined to open the door for him late at night.

9. He further recalled that, on the material date at around 5:00 pm, he carried the Accused on his motorbike from Majira Market and that, he dropped him at home which he confirmed was next to his home, as they were one family. He added that, the Accused used to cook for himself after his parents decided to reduce constant friction between them and the accused over food.

10. The witness (Prosecution Witness 2) further testified that when the Police arrived, they went back to the house of the deceased fortified by the presence of the police and that he closely checked at the body of his brother (deceased) and confirmed that he was dead.

11. **Justa Mukwati Ndiga** (Prosecution Witness 4) a wife to Prosecution Witness 2 and sister in law to the deceased testified and corroborated the evidence of her husband (Prosecution Witness 2) she added that on the material day at around 1pm, that the deceased went with a sufuria to collect water from their place and carried it to his home and was to come back for more but did not though he had left the tap running. The witness added that she closed the tap and went to the garden to pick some vegetables for lunch and that garden was next to the deceased's home. She added that she saw the deceased standing next to the house of Accused calling him;

“*Munene, Munene, Munene*”, but she did not hear the Accused respond and after that she went about her own business. At around 7:30pm, she said Prosecution Witness 1 went running to their house saying the deceased had been killed. She stated that, they rushed to the scene and found the deceased lying naked on the floor of his bedroom. According to her, it appeared someone wiped the blood away and washed the body because there was no drop of blood in the bedroom unlike the kitchen and the corridor leading to the bedroom which had a lot of blood on the floor.

12. She further corroborated the evidence of Prosecution Witness 1 and Prosecution Witness 2, regarding the conduct of the Accused. According to her, the Accused used to be very hostile to his parents adding that he used to beat his own mother (Prosecution Witness 1) and that at one time, he went home and stoned his parents' house breaking windows and door. She further recalled an incident when the Accused also threatened her with a panga forcing her to flee and report to the Area Chief. She testified that from that time, she avoided him and let the Area Chief resolve whatever issue that arose between them.

13. **Epapharus Nabea (Prosecution Witness 5)**, a brother to the deceased testified and told this court that, he was called on phone on the material date and time by Prosecution Witness 2. He stated that he rushed to the scene and was briefed on what had happened by his brother (Prosecution Witness 2). He corroborated the evidence of Prosecution Witness 1, Prosecution Witness 2 and Prosecution Witness 4. He added that, when he arrived at the scene there was fear and confusion because they did not know where the killer was. He added that, he was aware about the way the Accused treated his father prior to that date because the deceased at times used to borrow him money to appease the accused because when he wanted money he demanded it by force.

14. He further testified that, the deceased was an elder in church and kept on encouraging his son despite his waywardness. He further testified that, many a time the deceased would decline a proposal to report the matter to the Police. He recalled an incident when the Accused demanded for a cow from his father (deceased) and upon being given, he sold the cow and indulged in alcohol and exhausted all the proceeds without doing anything tangible for himself.

15. The witness further testified that, the Accused dropped out of school and began threatening his other siblings who had used their time well. He added that, the siblings relocated because they feared the Accused who was believed to be a bhang smoker and because of that, the brothers of the deceased kept away from home.

16. He further testified that, the Accused used to stay alone in his house and that he was cooking on his own after an altercation which saw him beating his own mother because of food. He added that there was a prior incident where the accused almost killed his father when he demanded money from him and because the father did not have any he threatened to kill him. He also recalled another incidence where the Accused went home drunk armed with a panga and tried to kill both his parents.

17. Dr. Justus Kitili (Prosecution Witness 3), the Doctor who performed post mortem examination on the deceased's body testified and tendered the post mortem report as Prosecution Exhibit 1. The Doctor found the following injuries on examination:

(i) *Blood clots in the mouth and nostrils.*

(ii) *Deep cut on the back of the head-5 cm long.*

(iii) *Deep cut on the lower left ankle.*

(b) **Internal examination**

(iv) *Subdural hematoma on occipital lobe of the brain*

of the brain.

18. The doctor opined that, the deceased died as a result of severe head injury inflicted by a blunt object.

19. **Benard Kaburu Magambo** (Prosecution Witness 7) the Area Assistant Chief testified too and majorly corroborated the evidence of Prosecution Witness 1, Prosecution Witness 2 and Prosecution Witness 4 regarding the chain of events.

20. He added that he had previously received many complaints about the Accused herein from the deceased because of the troubles he was causing at home. He testified that he was aware that the deceased used to give the Accused Kshs. 200 daily just to pacify him. He recalled receiving reports that the Accused had at one time destroyed his uncle's fence which bordered his father's parcel of land. He also recalled another incident where the Accused destroyed coffee crops belonging to his uncle. He added that the Accused was a nuisance to his parents and relatives and that every time he was arrested for the various offences he committed either against his parents or relatives, the deceased used to plead for his release and the Accused would be released.

21. He added that had the father not have been merciful, the Accused could have been jailed long before he eventually killed him.

22. He testified further that he resolved many disputes caused by the Accused and that the deceased was a respectable Church elder who used to attend the same church as himself. He stated that the deceased used to be so accommodating to his son hence the decision to give him Kshs. 200 daily to try and stop him from causing trouble or throwing tantrums. He added that, only the Accused person was staying with his parents.

23. Prosecution Witness 8, **Corporal John Koriemba**, works at CID department Maara. He recalled that on the material day at around 8:00 pm, he received a call from his Senior Joseph Ongera, who instructed him to proceed to the scene of the crime with other officers. Upon arriving at Mugwigu Sub-location where the subject incident occurred, they found the body of the deceased. The homestead was sufficiently lit as there was electricity. They found a lot of blood along the corridor of the deceased's house. The deceased's body was naked and had been washed. There was no blood on the deceased body. The deceased had a cut on the back of the head and on the left leg at the feet. They found clothes and a panga in the kitchen. The panga had few blood stains and appeared like it had been washed. Prosecution Witness 8, produced the panga as prosecution exhibits 2. Prosecution Witness 1 told them that the black trouser, t-shirt and sandals were the clothes that the deceased had worn on the material day. Blood stains were still visible on the trouser which Prosecution Witness 8 produced as Prosecution Exhibit 3(a), he also produced a t-shirt as Prosecution Exhibit 3(b) and sandals as Prosecution Exhibit 3(c). Prosecution Witness 8 stated that there were also blood stain on the floor of the kitchen. Prosecution Witness 8 interrogated the witness before they collected the body and took it to Chuka Hospital Morgue. He also recalled asking the scene of crime officer to take photographs before the body was collected.

24. Prosecution Witness 8 went back to the deceased's homestead on 18th November, 2017 and found that the blood stains began where the Napier grass had been cut all the way to the kitchen and then to the house of the deceased He noted that the deceased had vomited. He also found out that the accused within his home where he went and arrested him. On cross examination, Prosecution witness 8 stated that he did not interview the witnesses who testified before the court. He also stated that they did not find anything in the Accused's house.

25. Prosecution Witness 9, CPL James Murithi works with the DCI Meru County and testified that on 20th July, 2020, he received 5 photographs from PC Isaiah of DCI Maara who requested him to certify the same for purpose of producing them in court. Prosecution Witness 6 gave the certification and wrote a certificate which he produced together with the five photographs as Prosecution Exhibit 6 and Prosecution Exhibit 5 (a) – (e) respectively.

26. When placed on his defence, the accused denied on oath killing his father. He denied being troublesome at home. He defended himself saying that on material day he was at home and was feeling unwell. He added that around 4Pm, he went to buy pid feeds at Majira Market and that on his way back he met Prosecution Witness 2 who gave him a lift on his motorbike. He added that his uncle dropped him home at around 6pm and he went straight to his house and never went to the deceased's house. He told this court that, he fed his pigs and cooked some food for himself as he used to cook on his own. He testified that, later two neighbours, Tony Kinyua and Grace Kibaara went to his house and checked if he was in and left without talking to him. He testified that he followed them to the deceased house where he found his father dead covered with a blanket. He added that he felt bad and went to his house to relax and that after few minutes the police came and arrested him.

27. He testified that he had a good relationship with his father and denied demanding any money from him by force though he conceded that he had small differences with the deceased but added that they would always resolve them. He denied threatening his parents in the past and testified that he never heard any commotion during the material day and time.

28. This court has considered the evidence tendered by the prosecution and the defence offered. This is a case of murder and the law requires the following elements to be established proved beyond reasonable doubt for a charge of murder to be sustained:

a) Death of deceased

b) Cause of death

c) Actus Reus

d) Mens Rea

29. The first two elements were clearly established and proved by the evidence tendered by the prosecution.

30. The evidence of Prosecution Witness 3 (Dr. Justus Kitili) corroborated the evidence of Prosecution Witness 1, Prosecution Witness 2 and other Prosecution Witness in respect to the fact of death. The Death Certificate Serial Number 1140173 and Post Mortem report prosecution exhibit 1 proved beyond doubt that Jospher Marangu died and was murdered with the cause of death being indicated as severe head injury inflicted by a blunt object. The other injuries noted from post mortem examination showed that the injuries were deliberate and caused by someone who wanted to cause grievous harm or death to the deceased.

31. (c) **Actus Reus**

The Prosecution's case in regard to this crucial element relied on circumstantial evidence as there is no one who saw the Accused killing the deceased. The evidence tendered, placed the Accused person as the only person who was in close proximity to the deceased shortly before he was found dead. The law however is clear that suspicion alone however, strong cannot found a conviction as held in the case of ***Sawe Versus Republic (2003) eKLR***.

32. For the prosecution case to succeed against an Accused person based on circumstantial evidence, it must show a strong link between an Accused person and the murder of a deceased person. The evidence must be incapable of any other reasonable hypothesis other than the guilt of the Accused person.

In ***Mohamed & 3 Others Versus Republic (2005) eKLR, page 722***, the court held as follows: -

“Circumstantial evidence means evidence that tends to prove a fact indirectly by proving other events or circumstances which afford a basis for reasonable inference of the occurrence of the fact at issue. The circumstances should be of a conclusive nature and tendency and they be such as to exclude every hypothesis but the one proposed to be proved.”

33. The above position is evident in the decision of ***Mwangi & Another Versus Republic (2004) eKLR*** where the Court of Appeal made the following useful observation;

“In a case depending on circumstantial evidence, each link in the chain must be closely and separately examined to determine its strength before the whole chain can be put together and a conclusion drawn that the chain of evidence as proved is incapable of explanation on any other reasonable hypothesis except the hypothesis that the Accused is guilty of the charge.”

The same Court prior to the above decision had rendered itself more elaborately in ***Sawe Versus Republic (Supra)*** as follows;

a) In order to justify on circumstantial evidence, the inference of guilt, the exculpatory facts must be incompatible with the innocence of the Accused and incapable of explanation upon any other reasonable hypotheses than that of his guilt.

b) Circumstantial evidence can be a basis of a conviction only if there are no other existing circumstances weakening the chain of circumstances relied on.

c) The burden of proving facts which justify the drawing of this inference from the facts to the exclusion of any reasonable hypothesis of innocence is on the prosecution. This burden always remains with the prosecution and never shifts to the accused.”

34. The Accused person was seen by Prosecution Witness 4 at his house at 2:30pm Prosecution Witness 2 dropped him at his compound at around 5 pm after picking him at Majira Market. The Accused himself conceded to this fact in his defence.

This court finds that the Accused was squarely placed at the scene of murder and the fact that he himself says he heard no commotion emanating from the deceased, shows that he was the only person who had the opportunity to commit the Act.

35. I also find his conduct after learning of his father's death to be telling. He says that he followed two neighbours who had gone to his home at around 7pm and that after seeing his father lying dead covered in a blanket he just went back to his house to, using his own words, “relax”. The question posed is how can a person go and relax after seeing his own father lying down dead? How can he state he went to “relax” unless he was not bothered having succeeded in his mission to eliminate his father for whatever reason?

The panga used as the murder weapon was tendered as an exhibit and Prosecution Witness 1 stated that the panga belonged to the deceased. The blood soaked clothes were recovered and produced as exhibits.

What is apparent from these exhibit and circumstances particularly attempts to clean the body and the floor of blood, is that the murderer had sufficient time to execute his heinous act and knew the home well. It is evident from the evidence tendered that the wife to the deceased (Prosecution Witness 1) had left in the morning to work in a garden which was far. It is probably only the Accused who had that knowledge of the fact that there was no one else in that home at that material time.

36. From the evidence tendered before this court, I am satisfied that the prosecution discharged the burden of proving the element of *actus reus* and successfully linking it with the Accused person. There was no one else other than him who could have all the time or opportunity to do or execute the crime in the manner it was done. All the circumstances points to that irresistible conclusion.

37. (b) **Men rea**

The Prosecution similarly relied on the history and the conduct of the Accused person to link him as the only person who harbored ill motive

against his father. This court had the occasion during trial to observe the demeanor of the Accused and to me he appeared to be living in denial. When this court questioned him during his defence in regard to his education and his drinking habit, he appeared evasive and out rightly dishonest. He stated that he did well in his studies in the first year and 2nd year when evidence to the contrary was apparent.

38. This court also observed him keenly when he stated as follows in regard to his mother after she found out that the deceased had been murdered;

“She did not come to me. She had some fear because she had to take cover because may be if it was me I might have harmed her as well”.

39. That statement in my view was quite telling when viewed in the context of the way the accused had previously treated his parents. He had beaten his own mother in the past. He had threatened her and threatened his own father who was at times forced to borrow money to sustain his son’s (Accused Person) insatiable appetite for money. From the evidence of Prosecution Witness 5, Prosecution Witness 7, both brothers to the deceased, it is evident that the deceased was living a troubled life courtesy of his son who obviously was considered a black sheep in the family,

40. The siblings of the Accused though were not called to testify had evidently relocated and stayed far from their home due to hostility from the Accused person. This court owing to his previous conduct and what he did after seeing his father lying dead can deduce that he harbored ill motive against his own father. The violent manner in which the deceased died shows that person (which in this instance is the Accused) had malice aforethought by operation of law, clearly stipulated under **Section 206 of the Penal Code**. The section provides;

“Malice forethought” 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.

41. The Court of Appeal in **Bonaya Tutuu Ipu and Another versus Republic (2015) eKLR** made the following observations which I find relevant in this case:-

“It is in rare circumstances that the intention to cause death is proved by direct evidence. More frequently, that intention is established by or inferred from the surrounding circumstances. In the persuasive decision of Chesakit Versus Uganda, Criminal Application No. 95 of 2004, the Court of Appeal of Uganda stated that in determining in a charge of murder whether malice aforethought has been proved, the court must take into account factors such as the part of the body injured, the type of weapon used, it any, the type of injuries inflicted upon the deceased and the subsequent conduct of the accused person. Earlier in Rex Versus Tubere S/O Ochen (1945) 12 EACA 63, the former Court of Appeal for Eastern Africa stated thus on the issue:

“It (the court) has a duty to perform in considering the weapon used and the part of the body injured, in arriving at a conclusion as to whether malice aforethought has been established, and it will be obvious that ordinarily an inference of malice will flow more readily from the case, say, of a spear or knife than from the use of a stick....”.

42. This Court finds that, in light of the above provisions of law and the Court of Appeal decision, the element of *Mens rea* was established and linked with the Accused beyond reasonable doubt based on the evidence tendered.

43. The long and short of this is that, this court finds that, the Prosecution’s case against the Accused has been proved beyond reasonable doubt. It is unfortunate that, the Accused was mercilessly killed by his own son who ironically could have been sent to jail long before he committed the heinous crime but for act of love and mercy from his own father. The deceased like any parent never lost hope on his son and thought he would hopefully change but as it turned out, that was a fatal mistake because the Accused person harbored ill intentions which he regrettably managed to carry out by eventually causing his death. For that, this court finds him guilty of murder as charged and he is hereby convicted for the offence of murder under **Section 203 of the Penal Code**.

DATED, SIGNED THIS 7TH DAY OF JUNE, 2021.

HON. JUSTICE R. K. LIMO

JUDGE

DATED, SIGNED AND DELIVERED AT CHUKA THIS 15TH DAY OF JUNE, 2021.

HON. LADY JUSTICE LUCY GITARI

JUDGE

SENTENCE:

I note that this is a case of domestic violence per excellence where a son after a long period of harassment of his parents decides to eliminate his father. These incidents are no doubt prevalent. Cases of family members killing their parents, siblings and even children meet our eyes and ears every day in the print and electronic media.

This is a sad case of a son killing his father who he was supposed to respect to earn blessing from God but chose otherwise. People should be made to know killing does not solve any problem but certainly aerates more problems as the accused will start to realize. There is every reason to discourage this offence with deterrent and stiff sentence.

The accused is sentenced to thirty five (35) years imprisonment. The time he has spent his custody, that is from 18/12/2017 shall be taken into consideration when computing the sentence. There is right of appeal within 14 days. This has been explained.

L.W. GITARI

JUDGE

15/6/21