



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

(CORAM: CHERERE-J)

CRIMINAL CASE NO. 73 OF 2016

BETWEEN

REPUBLIC.....PROSECUTOR

AND

GEORGE MAINGI.....ACCUSED

JUDGMENT

1. **GEORGE MAINGI (Accused)** is charged with the offence of Murder Contrary to **Section 203** as read with **Section 204** of the Penal Code. The particulars of the charge are that **On 19th October, 2016 at Marania Forest, Gitiaraga village in Ntirimiti Location in Buuri Sub- County within Meru County, murdered MWENDA MBARIO**

PROSECUTION CASE

2. The prosecution called six (6) witnesses in support of its case. **PW1 Henry Kaimenya Marete**, a Forest Ranger testified upon receiving a report from one Muraja that Accused was suspected of killing the deceased. Upon receiving information that accused had committed murder, PW4 PC George Gachie arrested accused and from him recovered no exhibit. **PW2 Douglas Muthomi** stated that he spent the night of 18.10.2016 alone accused not having returned home. It was his evidence that he next saw accused the following morning with an injury on his forehead and in bloodstained clothes and he reported that he had been attacked and robbed the previous night. That later in the day, a body of a young man was recovered in the forest and accused who was suspected to have committed the murder was arrested and a bloodstained trouser was recovered from his house.

3. **PW3 Peter Nkunja** had employed the deceased to guard his farm and **PW6 Martin Muriungi** saw deceased's body on 19.10.2016 but did not know how he met his death.

4. A postmortem conducted on deceased's body by Dr. Bett on 26th October, 2016 revealed that the deceased suffered burns on left arm and leg, deep cut on right thigh with missing chunks of muscle tissue, missing facial muscles, missing scalp and gouged out eyes. An opinion was formed that deceased died of excessive bleeding secondary to severe body mutilation as evidenced by the postmortem form **PEXH. 5**. Accused was subsequently arrested and charged.

5. **PW7 CPL Andrew Lokelima**, the investigating officer tendered a government analyst's report **PEXH. 9 (h)** which shows that a sky blue shirt, dark blue t-shirt, brownish trouser, greying shirt, greying jacket and pullover contained bloodstains whose DNA matched that of the deceased.

DEFENCE CASE

6. In his sworn defence, Accused stated that he did not know the deceased and denied killing him.

ANALYSIS AND FINDINGS

7. I have considered the evidence on record. **Section 203** and **204** of the **Penal Code** under which the accused is charged provide for the offence of murder and the punishment for it. They require that the prosecution prove beyond reasonable doubt that the accused by an unlawful act or omission caused the death of the deceased through malice aforethought. The sections read as follows:

“203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of

murder.

204. Any person who is convicted of murder shall be sentenced to death.”

(a) The death of the deceased

8. That **Mwenda Mbario** died was confirmed by all the prosecution witnesses and was corroborated by the postmortem form **PEXH. 5** which reveals that deceased died of excessive bleeding secondary to severe body mutilation.

(b) Proof that accused person committed the unlawful act which caused the death of the deceased

9. In order to establish the accused’s culpability, the prosecution wholly relied on the government analyst’s report **PEXH. 9 (h)** which shows that a sky blue shirt, dark blue t-shirt, brownish trouser all alleged to belong to the accused contained bloodstains whose DNA matched that of the deceased.

10. The issue for determination is whether the prosecution has established any nexus between sky blue shirt, dark blue t-shirt, brownish trouser with the accused.

11. From the evidence on record, the prosecution did not lead evidence to establish how, when and by whom the sky blue shirt, dark blue t-shirt, brownish trouser alleged to belong to the accused were recovered. In the absence of evidence of recovery of the exhibits, the government analysts report tending to implicate the accused with the murder of the deceased stands on shaky grounds and falls short of proving the nexus between the exhibits and the accused.

12. I have considered the holding by the Court of Appeal in **SAWE vs. REPUBLIC [2003] KLR 354** and I am persuaded that the prosecution case contains insufficient circumstantial evidence that does not form a complete chain to justify a conviction.

13. The totality of my consideration of this case the prosecution has not proved its case beyond reasonable doubt. Accused is hence found **NOT GUILTY** of the offence of murder and is acquitted.

DELIVERED AT MERU THIS 15TH DAY OF JULY 2021

T. W. CHERERE

JUDGE

Court Assistant - Kinoti

Accused - Present

For the Accused persons - Mr. Wamache Advocate

For the State - Ms. Mwaniki