



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**(CORAM: CHERERE-J)**

**CRIMINAL CASE NO. 86 OF 2018**

**BETWEEN**

**REPUBLIC.....PROSECUTOR**

**AND**

**PIUS KOOME.....1<sup>st</sup> ACCUSED**

**STEPHEN MIRITI.....2<sup>nd</sup> ACCUSED**

**JUDGMENT**

1. **PIUS KOOME** and **STEPHEN MIRITI** (*Accused 1 and 2 respectively*) are jointly 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 05<sup>th</sup> September, 2018 at Kirimampio Location in Igembe South Sub-County within Meru County, jointly murdered WILSON MWERESA**

**PROSECUTION CASE**

2. On 31.08.2018, **PW2 Livingstone Muriuki** escorted **WILSON MWERESA**(deceased) to Maua Police Station where he reported that he had been assaulted by Miriti, Pius and Kirimi. The witness also escorted **WILSON MWERESA** to hospital where he was treated and discharged. **WILSON MWERESA** was later to be found by **PW1 Rose Karimi** lying dead in her farm on 05.09.2018. **PW3 CPL Timothy Wachira** visited the scene and removed deceased's body to the mortuary. It was his evidence that before the material date and more specifically on 16.05.2018, deceased had reported that Joshua Muturia Miriti, Koome, Mugambi and Muriuki had threatened to kill him. The witness stated on the basis of recovery from deceased's person of an OB extract number 78 of 16.05.2018 by which he had reported threats to his life and warrants of arrest for Pius, Miriti and Kirimi, he caused Accused persons to be arrested and charged.

3. **PW4 Dr. Michael Kariuki** tendered deceased's P3 form dated 31.08.2018 **PEXH. 1** which shows that he had suffered harm arising out of an assault by a man known to him who was in the company of two others. The doctor also tendered deceased's postmortem dated 21.09.2019 **PEXH. 2** which reveals that the deceased had multiple generalized bruises on face, hands, legs and neck, bleeding in the skull and brain and had died of cardiorespiratory arrest due to head injury with asphyxiation due to strangulation and aspiration.

**DEFENCE CASE**

4. In his sworn defence, **Pius Koome** (*Accused 1*) stated that deceased was his cousin. He denied assaulting, threatening to kill nor killing the deceased.

5. In his sworn defence, **Stephen Miriti** (*Accused 2*) similarly denied the offence and denied assaulting, threatening to kill nor killing the deceased who was his cousin.

**ANALYSIS AND FINDINGS**

6. I only heard the evidence by Accused 2 having taken over the matter from Hon. Ong'injo J. before whom the prosecution case and 1<sup>st</sup> Accused's defence were heard.

7. I have considered the evidence on record. For Prosecution to secure a conviction on the charge of murder, it has to prove three ingredients

which are: the death of the deceased; that Accused committed the murder and that he was actuated by malice. (See **Anthony Ndegwa Ngari v Republic [2014] eKLR**).

**(a) The death of the deceased**

8. A postmortem form **PEXH. 2** reveals that the deceased suffered had multiple generalized bruises on face, hands, legs and neck, bleeding in the skull and brain and had died of cardiorespiratory arrest due to head injury with asphyxiation due to strangulation and aspiration.

**(b) Proof that accused persons or any one of them committed the unlawful act which caused the death of the deceased**

9. It is not in dispute that the evidence presented by the prosecution was circumstantial in character there being no direct or eye-witness evidence to show that the appellant killed the deceased.

10. The crucial point from the evidence tendered by PW2 is that of an alleged recovery from deceased's person of an OB extract number 78 of 16.05.2018 and a warrant for the arrest of accused persons and another who had allegedly threatened to kill him.

11. It is worthy to note that the alleged OB extract number 78 of 16.05.2018 and a warrant for the arrest issued against accused persons were not tendered as exhibits thereby creating a doubt as to whether indeed deceased had reported that accused person had made a threat to his life.

12. In the light of the foregoing, I find that accused persons defence denying the offence were overwhelming unshaken and cast a reasonable doubt that in favour of accused persons.

13. 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.

14. The totality of my consideration of this case is that the prosecution has not proved its case beyond reasonable doubt. Accused persons are hence found **NOT GUILTY** of the offence of murder and are as a result acquitted.

**DELIVERED AT MERU THIS 15TH DAY OF JULY 2021**

**T. W. CHERERE**

**JUDGE**

<b>Court Assistant</b>	<b>- Kinoti</b>
<b>Accused 1</b>	<b>- Present</b>
<b>Accused 2</b>	<b>- Present</b>
<b>For the Accused persons</b>	<b>- Mrs. Otieno Advocate</b>
<b>For the State</b>	<b>- Ms. Mwaniki</b>