



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL CASE NO. 17 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

JUMA KHAMISI DZIMA.....RESPONDENT

J U D G M E N T

1. The accused Juma Khamisi Dzimba is charged with the offence of murder contrary to Section 203 as read with Section 204 of the penal code.
2. Particulars are that Juma Khamisi Dzimba on the 29th day of March 2017 at Miritini Area in Jomvu Sub-county within Mombasa County murdered Abubakar Ndegwa Mwarabu.
3. The prosecution's case was that the deceased was employed as night guard by PW 1, PW 2 and PW 6 at their place of business. He had worked for 3 weeks when on the night of 26th March 2017 he was attacked and injured. The deceased was taken to hospital by PW 2 but he died on 29/03/2017.
4. PW 1 said the deceased said he didn't know the names of the attackers but could identify them but he died before he identified them.
5. PW 2 said the deceased described the person who attacked him but he didn't say that the attacker owned a hotel across the road. PW 3 also said that the deceased told him he knew the person who attacked him at night but he didn't know his name.
6. PW 8 P.C. Stephen Kakai investigated the murder and preferred charge against the accused. He said PW 2 the deceased employer is the one who reported attack and murder of the deceased at Jomvu Patrol Base and Changamwe Police Station respectively.
7. According to Investigating Officer PW 2 said that the deceased told him the identity and name of the attacker as the accused and he referred him to CPL. Felix Kogun of Jomvu Patrol Base where PW 2 identified accused and he was arrested within Miritini area and escorted to Changamwe Police Station. PW 8 said he interrogated suspect and recorded his statement and after mental assessment had been done, he was charged.
8. PW 8 didn't meet the deceased while alive and that it was PW 2 whom the deceased told that accused had attacked him. The prosecution closed its case and this matter therefore comes up for a ruling on whether accused has a case to answer.
9. The prosecution was expected to prove fact of death, cause of death, whether death was caused by an unlawful act and/or omission whether the unlawful act and/or omission was actuated by malice aforethought and whether the unlawful act and/or omission actuated by malice aforethought was perpetrated by the accused.
10. It is not in dispute that the deceased died following an attack by unknown people at the place where he was guarding at night. The attackers inflicted multiple injuries which left the deceased helpless and PW 2 was called and he rushed him to Coast General Hospital. Those injuries were obviously meant to cause grievous harm so that the deceased could not stand between the robbers and the crime they wanted to commit of breaking into the business premises of PW 1, PW 2 & PW 6 and steal from therein. The injuries led to the death of the deceased while he was undergoing treatment at the Coast General Hospital.
11. Although PW 8 said that PW 2 led CPL Felix Kugun - PW 9 to arrest the accused person herein & PW 9 CPL Felix said he and P.C. Mboko met PW 2 and he identified the suspect whom they arrested and escorted to Changamwe Police Station, PW 2 however during his testimony denied having identified accused for arrest and that he was seeing him in court for the 1st time after his arrest.

12. Being that PW 8 & PW 9 did not get into contact with the deceased upon his attack and while he was undergoing treatment at Coast General Hospital upto the time he died, the arrest of accused on alleged death declaration by the deceased which has been denied by PW 2 cannot warrant the placing of accused on defence.

13. There is totally no evidence for this court to rely on to place accused on his defence. He is found not guilty and acquitted under Section 210 Criminal Procedure Code.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 14TH DAY OF OCTOBER, 2021

HON. LADY JUSTICE A. ONG'INJO

JUDGE

COURT

Security deposited to be released to Surety.

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of:-

Ogwel – Court assistant

Mr. Mulamula for State

Accused – Present in person

Mr. Magolo Advocate for accused

HON. LADY JUSTICE A. ONG'INJO

JUDGE