



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

(CORAM: CHERERE-J)

CRIMINAL CASE (MURDER) NO. 52 OF 2016

BETWEEN

REPUBLIC.....PROSECUTOR

AND

JOSEPHAT MURIAIKWA.....ACCUSED

JUDGMENT

The charge and the evidence

1. **JOSEPHAT MURIAIKWA (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 17th July, 2016 at Mujene village, Nkuene Location in Imenti Central Sub-County within Meru County murdered MESHACK BEN KIRIMI

PROSECUTION CASE

2. On 17.07.2016, **PW3 GRACE NGUGI** a resident of Ntimene was walking home about 06.00 pm found the deceased and Accused who were her neighbors fighting. Her attempt to stop the fight was unsuccessful as Accused hit the deceased with a stone on the back of head, beat her and escaped from the scene. She managed to get transport and escorted the deceased to hospital where he died while undergoing treatment and thereafter informed deceased's brother **PW1 GEOFFREY MUTUMA**.

3. **PW3 DR. GICHUNUKU** conducted the post mortem on 28.07.2016. The body was identified by **PW1 GEOFFREY MUTUMA** and **PW2 JACKSON M'RIMBERIA** who are deceased's brother and uncle respectively in the presence of PC Geoffrey Simiyu. After examining the body, he found it had bruises on face and neck and depressed skull fracture on the occipital region with intracerebral hemorrhage. He determined the cause of death as base of skull fracture with intracerebral hemorrhage due to head injury. The post mortem report was produced as **Exhibit 1** by Dr. Timothy Riungu PW4.

4. More than a month after the offence was committed and ore particularly on 20.08.2016, Accused was arrested by **PW5 PC GUYO JUMA** and charged

DEFENCE CASE

5. The accused gave a sworn statement and was cross examined. He conceded that he was a resident of Ntimene village but denied knowing the deceased or killing him.

6. **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.”

7. The offence of murder is complete when, “*malice aforethought*” is established if, pursuant to **section 206** of the **Penal Code** evidence proves 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.”

8. When none of the aforesaid elements are proved but there is otherwise an unlawful killing of another human being, the person commits the felony of manslaughter under **section 202 Penal Code** which is punishable under **section 205 Penal Code** by a term of imprisonment extending up to life.

ANALYSIS AND FINDINGS

9. I have considered all the evidence availed in this case as set out above and the issue in question is whether the prosecution has proved the death of the deceased; that Accused caused the death and that he was actuated by malice.

(a) The death of the deceased

10. The postmortem form **PEXH. 1** tendered by Dr. Timothy Riungu PW4. reveals that the deceased died of depressed skull fracture on the occipital region with intracerebral hemorrhage.

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

11. **PW3 GRACE NGUGI** a resident of Ntimene stated she found deceased and Accused fighting. Both accused and deceased were from the same village as the witness and she knew them well. Other than fighting with the deceased and hitting him on the head with a stone, PW3 stated that Accused also fought her for trying to stop the fight between him and the deceased. The witness stated that she had a close encounter with the accused. The incident happened at about 06.00pm and there is no possibility that accused could have been mistaken for another person. I have warned myself of the need for caution before founding a verdict of guilty on the evidence of a single witness and as much as accused denies the offence, I find that the evidence by PW3 clearly shows that she knew accused and had the opportunity to recognize him. I am therefore convinced that it was Accused, after fighting with the deceased for an undisclosed reason that hurled at him a stone that caused injuries leading to his death.

c) Malice aforethought

12. Having found that the prosecution has proved *actus reus*, the issue for determination is whether malice aforethought can be inferred now that a single blow to deceased’s head caused his death.

13. In **Morris Aluoch v Republic Cr. Appeal No. 47 of 1996 [1997] eKLR**, the Court of Appeal cited the case of **REX VS TUBERE S/O OCHEN** (1945) 12 EACA 63 with approval where it was stated as follows:

“If repeated blows inflicted the injury then malice aforethought could well be presumed but in this case we have to contend with one single blow which caused perforation of the intestine which led to internal bleeding which did not become apparent until the death of the deceased some four days late.

14. In this case, there is no evidence of repeated blows. This factor leads me to believe that the blow was an isolated one probably without any malice aforethought on the part of the Accused. In other words, it was likely that the Accused did not intend to kill the deceased but intended simply to beat him once.

15. Having considered all the evidence in this case, I have some doubt in my mind as regards malice aforethought and the benefit of such doubt must go to the Accused.

16. As a result, Accused is found guilty of a lesser charge of manslaughter contrary to Section 202 (1) of the Penal Code as read with Section 205 of the Penal Code and is convicted accordingly.

T. W. CHERERE

JUDGE

Court Assistant - Kinoti

Accused - Present

For the Accused persons - Mr. Muchomaba hb for Wamache Advocate

For the State - Ms. Mwaniki