



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL CASE NO. 3 OF 2016

REPUBLIC.....PROSECUTOR

-VERSUS-

JEREMIAH MUSYOKI Alias KIMANGU.....ACCUSED

J U D G M E N T

1. The Accused persons, Jeremiah Musyoki alias Kimangu is charged with the offence of murder contrary to Section 203 as read with Section 204 of the penal code. Particulars are that Jeremiah Musyoki alias Kimangu on the 16th day of January 2016 at Tabora area of Mariakani Township within Kilifi County murdered Moses Musyoki.

2. The prosecution case was tendered by 5 witnesses including PW 5 Dr. Zainab Bagha who produced postmortem report in which cause of death was established as hemorrhagic shock due to stab wound to the chest with injury to the left lung – EXP 3.

3. PW 4 the Investigating Officer who testified that the accused presented himself to the station and reported he had differed with someone and that he had stabbed the person. PW 4 explained that the deceased was demanding for money for a trouser. That the victim was by then undergoing treatment at Mariakani Hospital. The knife which accused surrendered as the weapon he used to stab the deceased was produced as an exhibit – EXP 2. PW 4 further testified that the victim was referred to Coast General Hospital where he died while undergoing treatment. Treatment notes & P3 form filed in respect of injuries was also produced by PW 3 as exhibits EXP 1 (a) & (b).

4. PW 4 testified in cross examination as that he investigated the case together with CPL Wekesa. He said the deceased demanded for money for his trouser from the accused on allegations the accused had stolen the trouser. PW 4 on further cross examination admitted that the deceased hit the accused head on the wall according to Samuel Gaita Kabuye statement. That the deceased tore the accused person's shirt. That according to PW 1 deceased went to remove the accused from his house. He admitted that the accused also suffered cut injuries on the hand between thumb and 1st finger and on the mouth.

5. PW 1 a minor girl child aged 14 years gave unsworn statement and stated the deceased found the accused seated at the veranda of the Kiswahili type house which was made of many rooms rented by different tenants. That the deceased asked for his trouser from the accused claiming the accused had broken into his house and stole a trouser. That the accused went into his house and the deceased followed him. That the deceased threw the accused persons jiko and the sufuria which had hot water. That the 2 then got out of the house and continued quarreling for about 15 minutes.

6. That the accused then entered his house and came out with a knife. PW 1 identified the knife in court. That the accused stabbed the deceased with the knife on the left side below the ribs and deceased fell down and accused was left standing while holding of the knife. PW 1 went to call the mother who left her taking care of her siblings as he went to the plot. That 2 days later her grandmother received a call from hospital and she was told Moses had died. She said by the time the deceased died accused had been arrested.

7. In cross examination PW 1 said she saw the accused and deceased quarrel. That she told them to stop quarreling but the deceased insisted he wanted his trouser. That the deceased took the charcoal jiko and the sufuria with hot water that was on the jiko and threw it outside. She said the quarrel is the one that made the accused to stab the deceased. She said Jemima was around and she tried to separate them but they did not stop fighting. She said that deceased followed the accused into the houses the 2 came out of the house together. PW 1 said that accused told the deceased he sold his trouser.

8. PW 2 Jemima Mutheu Mutuku testified that she had 5 neighbours where she lived in a Swahili type house in Tabora – Mamakali. She said she arrived at the plot on 16/1/2016 at 6.00pm and found her 2 neighbours Moses Musyoki and the accused quarrelling about a trouser which belonged to the deceased. That she told them to stop quarreling and she entered her house. That when she entered the house she heard a jerrican which was in the corridor being kicked.

9. That when she got out she found the accused holding a metallic knife. That at that time the deceased was trying to defend himself. That she separated them by pushing the deceased into her house and told accused not to stab the deceased but the deceased told her he had been stabbed already by the accused and was bleeding below the ribs on the left side. That accused wanted to run away but she cautioned him. That he was still holding the knife. That he locked his house and jumped over the fence. That the deceased fell down in the corridor.
10. That she called neighbours but no one was willing to come where the deceased was lying. That PW 2 went to Mariakani police station and reported. That the deceased was taken to Mariakani Hospital where 1st aid was conducted before he was transferred to Coast General Hospital. She said she found the accused person at the police station and she reported he had stabbed the deceased.
11. PW 2 said accused had the knife but he also had an injury on his hand. PW 2 in cross-examination said she had not seen accused quarrel with anyone in the compound. PW 2 said she didn't know who started the quarrel as she found accused and deceased quarreling. She said she didn't see accused with any injury when he was in the premises. She said she didn't see any charcoal jiko or sufuria in the corridor when she arrived. She said she didn't know if the knife belonged to the deceased or the accused. She said she doesn't know if the accused was defending himself when he stabbed the deceased.
12. When accused was placed on defence he gave sworn statement and said he was the caretaker of the plot where incident herein occurred. He said he returned from his miraa kiosk at in the morning as he worked overnight. He said there was no one at the plot and he entered his house, prepared tea for breakfast after which he brushed his teeth and went to sleep. That at about 2.00pm he heard a knock at the door and he found it was Musyoki a tenant at the plot.
13. That Musyoki told him he didn't find his clothes on the drying line. Accused told him he didn't know what happened to the clothes as he didn't find someone on the plot. That suddenly Musyoki held him by the collar pulled him out of the house hit him on the mouth with his head and made him to sit on the slab. That Musyoki the deceased produced 200/= from his wallet and gave him so he could say where he had sold the trouser. That although he said he didn't know what the deceased Musyoki was taking about he insisted that the accused was the only one at the plot and therefore know where his trouser had gone to.
14. He said he was by then bleeding from the mouth and his T-shirt had blood stains. That when he entered the house to rinse his mouth which was bleeding as Musyoki entered his house and removed his jacket. That when he turned to go out he found Musyoki had followed him into his house and pushed him onto the bed and sat on his abdomen and held his throat. That Musyoki produced a knife and wanted to stab him but he held the knife. He said the deceased was heavily built. He said the deceased pulled the knife but he didn't let go. That they struggled and when he fell, he fell on the knife. That when he saw the deceased had been stabbed he removed the knife and took it to Mariakani police station where he reported he had been attacked by a tenant.
15. The report was booked and the knife taken as exhibit and he was placed in cells. The blood stained T-shirt was also taken as exhibit and he was taken to Mariakani hospital where the cut between his thumb and Index finger was treated and P3 form filed. The accused stated that it is the deceased who attacked him and as he was defending himself the deceased sustained fatal injuries. He said the deceased was a tenant and he was a caretaker. He said he had not differed with the accused before and he didn't know about the trouser deceased claimed from him.
16. From the evidence on record for the prosecution and the defence the issue for determination is whether the prosecution has proved the offence of manslaughter beyond all reasonable doubt.
17. It is not in-dispute that the deceased died. PW 1, PW 2, PW 4 and PW 5 confirms this fact. It is also confirmed that the deceased died because of hemorrhagic shock due to stab wound to the chest with injury to the left lung. Although the accused would like the court to believe that the deceased was stabbed when he fell on a knife he wanted to use to stab him, PW 1 was very clear that the accused went into his house and came out with a knife which he used to stab the deceased.
18. If it is true that the deceased had pushed the accused on to his bed on the house and that he pushed the deceased and he fell onto the knife, the stab wound would have been to his back. It is not explained how he was pushed and he turned and fell on the knife he is alleged to have been holding. PW 2 also said that the accused stabbed the deceased while they were in the corridor of the Swahili type house where they were residing. No blood stains were said to have been found in the accused person's house to confirm that he pushed the deceased to free himself and that the deceased fell on the knife.
19. It was admitted by the Investigating Officer that the deceased was the aggressor and that PW 1 demonstrated this aggression by saying that the deceased went into accused persons house and threw a charcoal jiko which had a sufuria with water outside. However the accused had the opportunity to avoid confrontation which PW 2 returned and found them quarrelling and told them to stop. Instead he went back into the house and took a knife which he used to stab the deceased.
20. I do find that although the offence was not premeditated and therefore no malice aforethought could be construed, this court finds that accused committed the offence of manslaughter and he is consequently convicted under Section 332 Criminal Procedure Code.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 3RD DAY OF DECEMBER, 2021

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of:-

Turuki – Court assistant

Mr. Mulamula for state

Ms. Odhiang Advocate for Accused

Accused – present in person

Hon. Lady Justice A. Ong'injo

Judge

Mr. Mulamula

I have no records.

Ms. Odhiang

We pray for a pre-sentence report.

Order

Mention on 15.12.2021 for pre-sentence report.

Hon. Lady Justice A. Ong'injo

Judge

3/12/2021