



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARISSA

CRIMINAL CASE NO. 16 OF 2014

REPUBLIC.....PROSECUTION

VERSUS

JOHN MULU MUNUVE.....ACCUSED

JUDGEMENT

1. The accused was charged with offence of murder contrary to section 203 as read with section 204 of the Penal Code Cap 63 Laws of Kenya.
2. The particulars being that on 23/8/2014 at Mutwaende area, Kyangati Sub-Location, Kavindu Location in Mwingi East District, Kitui County murdered Mwandikwa Kitheka.
3. The accused pleaded not guilty and the prosecution closed its case.
4. The postmortem was produced by the investigation officer by consent of both parties.
5. PW1 David Mwanja Assistant Chief Mbuni Sub-Location testified that on 23/8/2014 as he arrived Nguni Shopping Centre he met huge crowd and one of the young man Kimwele Luto told him they got the accused who had killed the deceased. They were holding him and wanted to burn him. He asked the accused why people wanted to burn him and he said because he said killed the deceased. He (witness) thus phoned the chief of the area that deceased was killed. He came and they called police officer from Nguni Police Station. They took accused to AP Camp. He spent there for a night and police collected him. The next morning the accused said he killed the deceased. Then he was talking things they could not understand. The witness went to the scene of crime.
6. PW2 Benjamin Kithikii Kikane a village elder testified that he knew deceased as he used to see him. He was a traditional medicine man. He was a neighbour to accused. He stated that on 23/8/2014 while repairing his fence together with his children the accused came at 11.30 am. They worked up till 1pm when they went for lunch, then left for Kanyonyo town till 6pm. Next day he got call from his brother with information that people got dead body near a river when they went to fetch water. He informed his local chief. They went to the scenes and found police had already arrived who collected the body. The witness did not know the deceased.
7. PW3 Robert Mulwa Kithikii stated that on 24/8/2014 he was fencing fence with his brothers, at 7pm accused passed and ate supper and left. After 3 days police with accused. They went to the scene of crime. The accused explained how he met deceased who said the deceased told him that he was kind of boys he bewitches. He said the deceased said he bewitched him to drop from school. The accused said he snatched stick deceased had carried and stepped on his chest. He died. The deceased paraphernalia sticks were at the scene. They were taken to police station, and him and accused were locked in the cells but separately. He recorded statement and was released.
8. PW4 Alice Nthinga mother of accused testified that she didn't know accused was arrested. She learned that there was a person who had been killed. Her son told her that he didn't know about the killing. She told her husband about the arrest of son and the allegations. Accused told him about it at the police station. The father of the accused paid compensation to the family of the deceased. He went with other people to pay compensation they took male and female herds of cattle. He negotiated for compensation when he heard his son was arrested for killing deceased. He said accused get mental illness such that he could strip and go nude. He would sleep outside in the bush. Her first born accompanied her husband to pay compensation.
9. PW7 Investigation Officer testified and produced postmortem as defence conceded. The postmortem showed injuries of deceased to be tempered region decomposed skull fracture. The cause of death was stated to be severe head injuries. Him with the officers visited scene while with accused who confessed to killing. No confession was recorded or produced by police. He had though confessed to local administrators.

10. The prosecution closed their case and on ruling the court found that accused had a case to answer.
11. In unsworn statement without witnesses the accused stated that he denied the charge. He never committed the crime.
12. The parties opted not to submit but relied on evidence on record.
13. The ingredients of the offence charged are that:

(1) The fact that death occurred.

(2) That the death was caused by unlawful act of the accused; and

(3) That he had malice aforethought.

14. The occurrence of death is not contested. Both sides agree the deceased died and body was seen by all sides. The postmortem showed severe body injuries and also the cause of death was severe head injuries. The injuries were so severe that in absence of the circumstances of the infliction of the same, thus imply that whoever caused it intended to cause death or grievous harm thus malice aforethought was available.

15. As to whether the death was caused by the unlawful act of the accused, the accused was not seen killing the deceased. The only fact which implicates him is his implicating statement. The crowd which arrested him and PW1 all heard him admit that he killed the deceased. PW3 heard at the scene of the crime accused explain to the police how he killed the deceased. He (accused) said that the deceased said he bewitched accused to drop from school thus accused snatched the sticks the deceased carried and hit him on the head then stepped on his chest. Thus deceased died.

16. At the police station he also admitted killing the deceased. When his father talked to him he explained what happened prompting his father vides PW4 testimony to negotiate payment of compensation of male and female herds of cattle which was paid.

17. All that evidence was not challenged by defence either in cross examination or during defence hearing. The accused only stated in his unsworn statement that he denied the charge.

18. Thus the court finds that the illegal acts which caused death of the deceased were committed by the accused. That the 3 ingredients of murder having been established beyond reasonable doubt the accused is found guilty and convicted accordingly.

DATED, DELIVERED AND SIGNED AT GARISSA THIS 2ND DAY OF APRIL, 2020.

C. KARIUKI

JUDGE