



**REPUBLIC OF KENYA**

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

**HIGH COURT CRIMINAL CASE NO. 66 OF 2017**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**IBRAHIM MUCHUI RATANYA alias KAISER.....ACCUSED**

**JUDGEMENT**

1. The accused Ibrahim Muchui Ratanya alias Kaiser faces a charge of murder contrary to section 203 as read with section 204 of the penal code.
2. Particulars are that Ibrahim Muchui Ratanya alias Kaiser on the 31<sup>st</sup> day of May 2016 at Shauri Market of Kiburine area of Mbeu Location in Tigania West Subcounty within Meru Country murdered Stephen Muchana.
3. PW1 wife to the deceased testified that she received a call from Letizia who informed that her husband had been hit on the head with a stone by the accused and had been taken to hospital. When she rushed to hospital she was informed the deceased had already gone back home.
4. On arriving at home she found her husband lying on the bed and was very drunk. When she urged him that they should go back to hospital he refused. The following day she managed to take him to hospital where they arrived at 11.00 am. The deceased was given an injection and some tablets and they were referred to Meru TRH immediately. PW1 said they didn't have money at that time so she only managed to take the deceased to Referral Hospital on 2.6.2016 and he was admitted to the wards where X-ray was carried out and it was established he suffered injuries on front and back side of head. PW1 said her husband remained in hospital from 2.6.2016 to 17.6.2016 when he died while still undergoing treatment. The death was reported at Mbeu Police Station and Post mortem was later conducted and body released for burial. She testified that it is her father-in-law and a police officer who entered the mortuary to identify the body from Post mortem.
5. PW1 further testified that accused who came from neighbouring village was known to her and that she was not aware of his relationship with the deceased but that she knew the accused used to wrong the deceased. She said that although she told police she got report from Letizia, the Police didn't secure Letizia's statement. She said Letizia was a drunkard but she didn't know if she was drinking with the deceased. She said it is her husband who told her that accused had hit him with a stone. She also said that the police didn't record in her statement that the deceased told her that accused hit him. She said that Letizia was drunk by the time she called and reported that her husband had been hit by the accused on the head. She said that when she found her husband in the house he was drunk and even the following day he was still intoxicated. PW1 said that Letizia had since died around 2017 or 2018 before recording her statement. She said it is Andrew Michubu who found the deceased had fallen.
6. PW2 Mary Karambu Benard testified that the deceased was her cousin. She said that while at home she got a report that Muchui the accused had hit her cousin on the head and that the deceased was seriously injured. That she proceeded to see the cousin and found he was in bad condition.
7. That with the help of PW1 they took the deceased to Meru TRH where X-ray was done. That they were also told to have him undergo CT-scan and deceased was admitted. She later learnt the deceased had died and she accompanied PW1 to go and report at Mbeu police station. PW2 said accused was a neighbor and she had known him for long. She said that accused went and told her he had killed her cousin. She said that accused was a friend to her son known as James Murori and that he used to stay at her place but had been away for 2 weeks before hitting the deceased.
8. She however didn't tell police that accused reported to her that he had killed her cousin as she was not certain of the truth of what accused told her and she was also traumatized. She said that she had not differed with the accused. In cross examination she said that the deceased didn't tell her who beat him.
9. PW2 said that the accused told her it was him who injured the deceased but when recording her statement she didn't tell police that

confession by accused. She said accused and deceased were drunk at the time offence was committed but she was not at scene. She said she could not tell if the deceased fell and sustained injuries or whether accused hit him. She said her son was not with accused at the time offence was committed.

10. PW3 is deceased persons father. He said that when he learnt from PW1 that her husband had been hit on the head with a stone by the accused he sent 2 of his sons to go and check his condition. They reported to him the deceased was seriously injured. That on 2.6.2016 he went to visit the son who had been admitted and found he was in bad state. That deceased told him he had fought with another young man but didn't give name of the young man. That when he visited his son on 5.6.2017 in company of his wife and 2 sons, they found the sons condition had worsened and he could not talk and had to be held to be fed using a spoon.

11. That on 17.6.2016 when he went to hospital in the morning he was told his son had died. That on 23.6.2016 in company of deceased's wife they went to hospital to identify body of the deceased for postmortem. He said he saw that there was blood clot on the brain. In cross-examination he said he didn't know the accused and he could not tell if he was a friend to the deceased. He said that when he received phone call he was told that deceased was hit and fell but he could not tell if he was drunk at the time. PW3 also said that PW1 didn't tell him where she got information that the deceased had been hit as she was not at scene. He said the deceased only showed him the back of the head which was swollen but didn't speak audibly.

12. PW4 testified that his brothers called and informed him that his brother had been hit on the head by one Ibrahim Muchui. That on 17.6.2016 his brother died while undergoing treatment at Meru TRH. He said it is PW3 who gave him the information. That he and his brother PW5 went to Mbeu police Station to report. That he was present when Post mortem was conducted and it was established that death was caused as a result of injury on the head. He said that the deceased used to be a drunkard and that he was drunk on the day he was assaulted.

13. PW5 reiterated what PW4 said because they were together when PW1 called and reported that their brother who was her husband had been hit and was injured. He said that when they visited their brother at Meru TRH he was talking but with a lot of difficulty and pain and one could not understand what he was saying and he didn't tell them who injured him. He also said that Pw1 didn't tell them who injured the deceased and whether there was an eye witness.

14. PW6 Dr. Timothy Riungu produced Post mortem Report prepared by Dr Mutunga who carried out Post mortem on the body of deceased and established cause of death of the deceased as epidural haematoma. The Doctor observed a small laceration on the right forehead approximately 2 cm and indentation of occipital and left parietal bones. PW6 said that Dr Winnie Mutunga who conducted Post mortem was attending to a surgical procedure and that is why she could not attend court and testify.

15. PW7 P.C Fred Martin testified that he accompanied PW1 and other family members to Meru TRH mortuary to identify the body of the deceased and witness Post mortem at the instructions of the late CPL Evans Chebon. He identified EX01 as Post mortem Report filled by Dr. Winnie. PW7 said he had known the accused person as he had rescued him from a mob which wanted to lynch him on suspicion of bewitching some boys who had undergone rite of passage and were in seclusion. He said he had not differed with the accused and even used to give him hand outs whenever he requested. In cross-examination PW7 said he was not investigating officer and had not visited the scene of offence. He said he went to witness PM as Investigating Officer was unwell and that by the time he was leaving Mbeu Police Station in early 2017, the accused person was still at large. He said the deceased was drunk at the time of injury.

16. When the accused was placed on his defence he gave sworn statement and said that on 31.5.2016 he was coming from Mwonyangau to go home as his mother had called him and told him his children had been send away from school because of school uniform. That he was given permission at 4.00 pm to go home and the following day he went to buy the uniform at Mikinduri market. He returned home at 8.00 pm and later proceeded to Shauri market where he met Koronya at a bar and the deceased joined them at the bar and requested the accused to buy for him beer and when he told the accused that he didn't have money the deceased told him that he had come from work and he cant say that he didn't have money.

17. That when deceased insisted he bought him 250 ml of Trigger beer and that when deceased wanted more beer and the accused told he didn't have money the deceased left saying he was to come back and teach the accused a lesson. The accused person gave ksh. 1000/= to Koronya to go and look for beer. That when accused followed Koronya as he had taken long, he found him talking to some women and he asked him why he had not bought the beer and he was told to wait. That when Muchena heard this he said there was no money given to Koronya. That while entering the bar with Koronya deceased told Koronya he should not be bothered by a disabled man with one hand. Accused said that Koronya gave the deceased 300/= but he didn't know why the deceased was being given money. That he urged Koronya that they should leave but the deceased held him and hit him against the wall and tore his clothes. He said that his left hand was by then having a wound as it had been cut. He said they were removed from the bar forcefully and the deceased produced a panga and some women who were going to the market tried to tell him not to cut the accused but the deceased said he was even going to cut the right hand. That deceased cut him at the back of the head and he fell. That when the deceased wanted to cut him again he picked a stone and used it to hit him.

18. That he then went home and changed his clothes and went to Kiburine Police Station to report. That at the Station he found Muchena and his wife had also gone to report and he didn't enter the police station. That he went to the chemist and the wound on his head was dressed and the next day he went back to work.

19. In cross examination accused said the deceased was a family friend. He said he didn't know the other people at the bar as was a visitor there. He said he only knew Koronya and Muchena. He said he differed with the deceased because he was forcing him to buy beer. He said that the bar they went to had no name. He said Muchena nursed their son who had been circumcised in 2002 and that is when he knew him. He said he didn't know which part of the deceased body was injured as he ran away from scene. He said that he learnt Muchena had died when he was arrested. In re-examination he said that the witnesses who testified were not at scene.

20. From the evidence on record for the prosecution and defence as well as submission by accused persons counsel the issue for

determination is whether the prosecution has established the ingredients of the offence of murder.

21. From the prosecution's case it is apparent that the witnesses who testified were not at scene of the offence. PW1 the wife of the deceased claimed that the deceased told her it was the accused who inflicted injuries on him. She however didn't inform the police who recorded her statement or her father-in-law about the person who injured the deceased. The Father to the deceased said that the deceased could not talk audibly and only pointed at the head which was injured and did not tell him who injured him. PW1 said that it is Letizia an equally drunk woman who called and informed her that her husband had been injured seriously by Ibrahim, the accused herein. The Investigating Officer, did not secure the statement of Letizia or the owner of the bar where the incident occurred to confirm circumstances under which the fatal injuries were inflicted on the deceased.

22. The sister of the deceased also said accused went to her and informed her that he had killed her brother and when she went to visit her brother she found he was in a very bad condition and she accompanied the deceased wife to take him to Meru Teaching and Referral hospital where he was admitted but he died on 17.6.2016 while undergoing treatment. She also accompanied PW1 to go and make a report at Mbeu Police Station but did not remember to inform the Police about what the accused person told her about killing her cousin brother.

23. The accused persons defence confirms that he hit the deceased on the head and injured him and that when he went to report the matter after being attended to at a chemist he found the deceased and his wife had gone to report and so he didn't enter the police station.

24. The accused Person didn't deny that he informed PW2 that he had killed her cousin. He didn't also show the court the injury he suffered when the deceased allegedly cut him. Neither did he show a receipt issued by the alleged chemist where he went for dressing and medication. The accused said that he only knew Koronya and the deceased among the patrons at the bar but he failed to bring the said Koronya to explain what transpired on the material day that led to the killing of the deceased herein. From the analysis above from the circumstances that offence was committed while accused the deceased and one Letizia now deceased were in a bar and fact that PW1 confirmed the deceased was drunk and was still intoxicated the following day.

25. I find that there could not have been malice aforethought on the part of accused in committing the offence considering that the offence was committed in a bar, in circumstances that show that the accused and the deceased were drunk and as such the accused could not have planned to kill the deceased. The explanation by the accused has not been controverted by the prosecution whose witnesses were not at the scene at the time of the offence. I do find that offence of murder cant stand but I find accused guilty of offence of manslaughter. He is therefore convicted under section 322 CPC.

**HON ANNE ADWERA ONG'INJO**

**JUDGE**

**JUDGMENT DATED, SIGNED AND DELIVERED AT MERU THIS 8TH DAY OF OCTOBER 2020.**

**HON ANNE ADWERA ONG'INJO**

**JUDGE**

**In the presence of:-**

**CA: Kinoti**

**Accused: Present in person**

**State counsel: Ms Mbithe**

**Defence counsel: Mr Mwiti Advocate**

**HON ANNE ADWERA ONG'INJO**

**JUDGE**