



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL CASE NO. 23 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

GEDION KINGORI KARWAMBA.....1STACCUSED

IBRAHIM MEEME KIOBE.....2ND ACCUSED

JUDGEMENT

1. The accused persons Gedion Kingori Karwamba and Ibrahim Meeme Kiobi were jointly charged with the offence of murder contrary to section 203 as read with sections 204 of the penal code. Particulars are that Gedion Kingori Karwamba and Ibrahim Meeme Kiobe .
2. On the 20th day of November 2008 at Kianda Village, Kianda Sublocation Kiguru Location, Kiguru Location Igembe South District within Meru county jointly murdered Charles Mwinji.
3. PW1 testified that She was in the farm at 5.00 pm with her husband the deceased person herein together with Catherine and BM when accused persons herein came while armed with bows and arrows as well as pangas.
4. That accused persons demanded for Ksh 5000/= from the deceased but the deceased said he didn't have the money.
5. That she asked Meeme what the money was about and he said it was for Land they were cultivating. PW1 said the land they were cultivating belonged to them. That the deceased hid at her back but accused persons started beating the deceased severally. She said Kingori cut the deceased on the hand. PW1 said that accused person chased her away after cutting her husband on both hands.
6. PW1 said she ran and went to report to the chief called Samwel Muthomi. She said the next day she learnt the deceased body was found in the park having been beaded. She said the deceased persons body was buried without the head. She said the accused persons while chasing her away beat her up. PW1 said she had known accused persons since childhood as they went to same school. She said the deceased and the accused had not quarrelled and they are not related.
7. In cross examination PW1 said that the farm they were working is one hours walk away from their home. She said they were picking up their items to leave at 5.00 pm. When accused persons arrived in the farm and she said she was with the deceased, Catherine and BM. She said Catherine was assisting them. She said BM was her son and was 8 years old.
8. PW1 said she had a panga and Catherine and the deceased also had a panga but they didn't use the pangas to defend themselves. She said she raised alarm but no one responded. PW1 said that the incident took about one hour and she was held hostage upto about 7.00 pm when she was chased away.
9. PW2 Catharine Kangai testified that on 20th November 2008 she was assisting the deceased and Catherine Kangai in the farm when at 5.00 pm Kingori and Meeme and that Kingori had arrow and stone in his hand. That Meeme was having sword and arrows. That they beat the deceased. That when the deceased tried to hide behind PW1 she was told to sit down.
10. PW3 BM aged 15 years testified that when accused persons attacked them in the farm his father hid behind the mother –PW1 and Kingori put arrow on bow and told PW1 to get out of the way or else he would be shot.
11. That Kingori removed panga from the trouser and started beating his father from behind PW1. That the deceased hands were cut when he tried to shield himself.

12. PW4 identified body of the deceased for post-mortem on 25.11.2008.
13. PW5 chief of Kianda location testified that on 20th November 2008 he got a report from PW1 that her husband had been held hostage by accused persons herein while in the farm. In company of 2 administrative police officers and 2 members of public to deceased persons farm. He said that the farm they went to belonged to the deceased. He said there were no houses at the farm. Chief said that they followed trail of blood from scene to the park one kilometre away and found the deceased had been beheaded.
14. PW5 called police from Maua Police Station to collect the body of the deceased.
15. PW6 said that his brother BM returned home and said his father had been abducted by Giden and Meeme. PW6 reported to chief – PW5 that the next day Assistant chief – PW5 in company of Administration police and members of public went to search for the deceased in the farm from where he was abducted about 5 km away. He said they found blood at scene. That they followed trail of blood into the National Park. That at about 1.00 pm they found the body of the deceased. The chief called police who collected body and took it to mortuary.
16. PW6 said he knew accused persons and even their home but they are not relate.
17. PW7 PC Sergeant Patrick said he was in charge at Chiefs Office. He said on 29.1.2010 he arrested A1 and on search recovered receipts for lodges –different in Nanyuki. He said he handed over the receipts to investigating officer.
18. PW8 Dr Macharia conducted post-mortem on the body of the deceased and produced the Report.
19. PW9 APC Fredrick Kinyamu effected arrest of Meeme for cutting a tree without permit. When they got him to the post, members of public came baying for his blood claiming he was a murderer. They escorted him to Maua police station.
20. PW10 P.C. James Kimulu testified that on 21.11.2008 the DCIO Igembe south instructed him to go and patrol as there was a report of Kidnap. He said he was with CPL Rono and about 7 officers but their vehicle got stuck as it was raining and they didn't go for patrol
21. That on 22.11.2008 at about 2.00 pm DCIO called them and told them that chief of the area had reported that the person who had been kidnapped had been found at the National Park. That in company of CPL Rono together with Regular and administrative police went to scene and found the deceased body along the fence which had been broken. He said there was no blood at scene or sign of struggle and they suspected the deceased might have been killed elsewhere.
22. He said the body had no clothes. He drew sketch map. They took body to Meru Level 5 Hospital mortuary. PW10 said he recorded statements of witnesses and the wife of the deceased had injuries.
23. PW10 said on 26.11.2008 they tried to trace suspects but didn't find them.
24. When accused was place on defence he said that prior to his arrest he used to sell illicit brew in Embu. He said the deceased herein was known to him as they came from neighbouring villages. He said the deceased persons brother was Assistant Chief of Kianda. He said on 20.11.2008 he was in Embu and he was very sick and his business partner Jerusa brought him to Meru hospital. He said he arrived in Meru at 4.00 pm. A1 said he was treat and discharged at 5.00 pm and Jerusha his business partner in Embu booked for him 2 room. He produced treatment notes he claims were made by Dr. Mbaabu on a plain paper. He said the following day he proceeded to Embu while Jerusha went to Maua to get materials for brewing alcohol. He said that he recuperated for two weeks in Embu before Assistant chief arrested him on 29th December 2009. He said many people were arrested because of illicit brew. He said PW7 was with assistant chief when he was arrested. He said that whereas other people with him were released, he and Kobia remained in custody and after 4 days they were escorted to Maua police station. He said police visited his home and arrested his wife who had a small child. He said search was done in his home but nothing was recovered.
25. He said Joseph Kobia and his wife were arrested but he was charged with offence of murder in Cr.C. No. 5 of 2010. That he came to court for 2 years but then he was produced in court in Cr. C. No. 15 of 2009 in which he found 4 people had been charged. He said Cr. C. No. 5 of 2010 went missing and he proceeded with Cr. C. 15 of 2009. That when Cr c. No. 15 of 2009 was traced he was produced in court.
26. That in 2013, Ibrahim Meeme A2 was arrested. He said he came to know A2 in custody and he was joined in Criminal Case no. 15 of 2009.
27. He said he was not present when offence herein was committed. He said the witnesses were related to Assistant chief who is brother to the deceased. He said that his land in Kianda is reason he was being fabricated. He said witness in Cr. Case no. 15 of 2009 chased his wife from his land and he was staying on the land. He said Catherine's brother stays on his land. He admitted that the treatment notes he purported to produce as treatment notes were a female patient and it has cancellations which are not signed by the doctor who is alleged to have signed it. He said the documents he marked showed he was 40 years in 2008.
28. The said document also showed the patient who was attended to was having headache with loss of appetite whereas the 1st accused said he was vomiting and diarrhoeing. He said that he slept in a hotel belonging to County Council opposite the court. He said he was arrested because of illicit brew. He said the officer who arrested him remained with receipts for the hotel. He said it is deceased persons brother who fabricated him in CR.C. No. 15 of 2009. He said he had not differed with PW1 and PW2 or even PW3. He said it was not true that PW5 – Samuel found a trail of blood on his land. He said his land No. 3621 was an inheritance but same is not yet adjudicated and he does not have a title.
29. A2 testified that the deceased was known to him when he used to sell meat and that he came from Kiguru location. He said that on

19.11.2008 he differed with his wife who went to her parents home. That on 20.11.2008 he and Miriti Kiara went after his wife Seberina Mwiti in Kanjo. He said he was arrested at 3.00 pm and found only his mother in law and he was told to wait for his wife's.

30. That the father in law came back late while drunk and they could not have any discussions. That he spend the night at his in laws place and on 21.11.2008 they discussed and agreed that he goes back home with his wife.

31. He said he was arrested in 2013 while was splitting timber at his home. He said he was arrested for splitting timber without permit . he said it is in court he learnt of charge of murder. He said that the witnesses lied against A2 said he knew Catherine and BM for over 5 years. He said his father had a case over land with Bernard who is Catherine's brother. He said he was fabricated because he was facilitating his father. He said land dispute between his father and Benard was pending in the High court but he could not remember its particulars. He said he was also charged with another murder case in Cr. Case no. 15 of 2009 and it is related to the one herein. He said in cross-examination that witnesses in this case are same as those in Cr.C. No. 7 of 2017. He said Bernard is not a witness. He said his parents stay on land in dispute in Kalimba. He said the Assistant Chief and Bernard want to grab their land. He said PW4 –Mbaaruru and PW5 – Samuel Katheru are also witnesses in Cr. C. No. 7 of 2017. Ms Nelima Advocate for accused persons applied for adjournment to call Dr. Mbaabu on behalf of A1 and SRA were issued but on two occasions 2nd October and 24th October 2018 no witnesses attended and defence closed their case and written submissions were filed.

32. Form the evidence on record, the issue for determination is:-

- i. Whether fact of death has been proved
- ii. Whether the body recovered at the National park having been beheaded was established to belong to Charles Mwinji.
- iii. Whether death was caused by an unlawful act or omission.
- iv. Whether the unlawful act was committed by the accused persons
- v. Whether the unlawful act or omission was actuated with malice aforethought.

33. The accused persons in their submissions argue that deceased was not properly identified so the fact of death has not been proved. They said the deceased a mark on his hand that helped them identify him with it was a burn mark which had healed.

34. PW1, PW2 and PW3 said they saw accused persons attack accused with pangas and bows and arrows and that when PW1 tried to shield him she was also injured. She together with PW2 and PW3 were chased away and they left accused persons cutting the deceased.

35. The body of the deceased was found dumped in the National park having been beheaded.

36. A search team followed a trail of blood from scene where the deceased was attacked to where the body was found lying the National park. The manner in which the deceased persons hands were cut by the accused persons and the beheading can only be concluded to have been actuated with malice aforethought.

37. This court finds that prosecution has proved beyond all reasonable doubt all the 3 ingredients of murder against the accused persons. The defence alibi raised by accused persons was raised late in the day to deny prosecution a chance to interrogate the same. Secondly, the defence alibi was not corroborated. The doctor A1 claimed treated him was issued with summons failed to attend court and there was no evidence he was served. The document A1 marked for identification as his treatment notes referred to a female patient with different medical history from what he told the court. His business partner one Jerusha whom he claimed brought him to Meru for treatment didn't also come to testify.

38. In regard to defence by A2 he also said he went to his in laws place in company of one Mwiti but he didn't call him. He didn't call his wife or even his in-laws to confirm he was away from scene of murder on the material day. Their defences can't stand.

39. Accused persons are found guilty as charged and are convicted under S. 215 CPC.

HON. A.ONG'INJO

JUDGE

JUDGEMENT SIGNED, DELIVERED AND DATED THIS 7TH DAY OF FEBRUARY 2019.

IN THE PRESENCE OF:

Mr Mwenda – C/A

Mrs Mwathi for state

Mr Mokua Advocate holding brief for Nelima Advocate for accused persons

A1- Present in person

A2 – Present in court

HON. A.ONG'INJO

JUDGE

Mrs Mwathi

I don't have accused persons records but accused persons have pending cases. I wish to have more time to confirm.

Order

Mention 28.2.2019 for Victim Impact Statement and Records plus Mitigation. Notice to Ms Nelima.

HON. A.ONG'INJO

JUDGE