



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO. 69 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

JAMES MUIRURI MURIUKI.....ACCUSED

JUDGMENT

James Muiruri Muriuki, the accused, is charged with the murder of Katio Mbuvi contrary to section 203 as read with section 204 of the Penal Code. The offence is alleged to have been committed jointly with another not before the court on 7th day of September 2016 at Ziwani Area in Starehe Sub-County within Nairobi County. The accused denied committing this offence. The accused is represented by Mr. Solomon Wamwayi.

The evidence by the prosecution witnesses show that the accused was arrested by street urchins commonly referred to as 'chokora' in the early hours of 7th September 2016. Derrick Jeshi, PW7, who was one of the people who arrested the accused places the time of that arrest at 2.00am. At the time of his arrest the accused was in the company of another man. They were at Kamukunji Bridge at the time of accused's arrest and they were tossing two gunny bags into the river. Derrick was warming himself near that bridge with other street urchins when they saw the two men. The accused had a trolley on which was loaded the two gunny bags. The contents of those bags made the street urchins suspicious. According to Derrick they saw one gunny bag with a human form and made some noise. The man accompanying the accused ran away. The accused was detained by the street urchins and taken to Kamukunji Police Station together with the trolley. After the investigations were completed, the accused was charged with this offence.

The accused was placed on his defence. He testified without taking the oath. He did not call any witness. He told the court that on the date in question he met a customer at Kariokor. He said that he was hired to carry some goods for that person. The man took him to a plot near the Chief's Office and left him standing outside. The man went inside a house and came out with two bags which he loaded onto the trolley. The accused said he thought that the bags contained garbage because the customer told him to take the bags to Kamukunji Bridge and dump them into the river. He said that he believed he was carrying garbage. He charged the customer Kshs. 300 for the work. He testified further that when dumping the bags into the river, some street urchins came from under the bridge and confronted them. The man accompanying the accused ran away on seeing them leaving the accused and his trolley at the bridge. He said that he was taken to the police station at Kamukunji. He said that the police took him back to the bridge and retrieved the bags. He said that the contents of the bags were found to be a human body. He said he did not know the contents of the bag because he did not open them. He further told the court that police told him to lead them to the scene from where the bags were picked and he did so.

At the close of the case Mr. Wamwayi reiterated his earlier submissions that the accused is innocent and that he had been hired to carry the bags whose contents he did not know. He submitted that the defence of the accused is consistent that he did not know what was in the bags he was hired to carry on his trolley and that he was in company of the owner of the bags who ran away on seeing the street urchins. The prosecution did not make any submissions.

In determining this matter I have reminded myself that the onus of proving a criminal offence like the one under trial lies with the prosecution. The prosecution must prove unlawful death of the accused and that the accused caused that death with malice aforethought as defined under section 206 of the Penal Code. The standard of proof must be proof beyond reasonable doubt.

That the deceased died is not in doubt. Her death has been confirmed by Dr. Peter Muriuki Ndegwa, PW10. The doctor recorded his findings in the Post Mortem form produced in court as Ex. 9. The doctor noted and recorded the following injuries on the body of the deceased:

(i) Penetrating stab wound on the left breast 3cm long and located 3cm from the midline.

(ii) Penetrating stab wound on the left lower chest wall 5cm long and located on 4cm from the midline.

(iii) Penetration of the chest cavity via mid-sternum at the level of the 4th intercostal space.

(iv) Bilateral haemathorax.

(v) Heart was stabbed at the level of the right atrium with haemopericardium.

(vi) Liver was stabbed on the left lobe with haemoperitoneum.

(vii) Body was pale.

After the examination, Dr. Ndegwa formed the opinion that the deceased died due to exsanguination due to penetrating sharp force trauma to abdomen and chest. This evidence, coupled with the evidence that the body of the deceased was recovered from a river wrapped in a bag proves beyond reasonable doubt that the unlawful death of the deceased occurred.

On the issue of who caused the death of the deceased and the element of malice aforethought on the part of that person, I have read, considered and evaluated all the evidence including the defence of the accused. Grace Wanjiru, PW1, the landlady of the house where the body of the deceased was picked from testified that he had let out one of her iron sheet houses to a man called Kim who lived with his wife. She said that the police went to her home in Ziwani on 7th September 2016 in company of a street boy who led police to the scene. She testified that she told the police that she had not seen Kim. PW1 was not able to identify the accused.

Mary Muthoni, PW2, daughter of PW1 testified that police went to their home on 7th September 2016 in company of a man with dreadlocks who led police to a house they had rented to Kim. PW2 said that Kim used to live in that house with a woman who used to come once in a while. PW2 was not able to identify the accused as the person who had led the police to the scene.

Paul Mwaniki Nduati, PW3, son to PW1 testified that police woke them up on 7th September 2016 and that the police were in the company of Rasta (dreadlocks). He said that the police showed them photographs of a body of a woman. He testified that the woman was their neighbour and that she used to live with Kim. PW3 identified the accused as the man he referred to as Rasta and said that he used to see him for about 3 years at Ziwani. In cross-examination PW3 told the court that the accused used to operate handcarts and used to work for hire to ferry goods for customers. At the time PW3 was giving his testimony in court, the accused did not spot dreadlocks on his head.

SGT Charles Mugweru, PW5, who received the accused at Kamukunji Police Station told the court that they led to the scene by Derrick and other street urchins. The police retrieved the gunny bags from the river. They found out that one of the bags contained the body of a woman and the other bag contained assorted clothes and personal items suspected to belong to the woman. A National Identity Card bearing the name of Katio Mbuvi, the deceased, was recovered from one of the bags.

It is clear to me that none of the witnesses, PW1, PW2 and PW3 associated the accused with the house suspected to be the scene of the killing. He was not identified as the tenant referred to by the three witnesses as Kim which this court was told was Kimani in full. PW1 the owner of the plot and her daughter PW2 did not identify the accused in court. PW3 identified him as the man who took police to the house in question. PW3 also told the court that he knew the accused as a handcart pusher for hire. Further, I have compared the evidence of PC Josphat Mulume, PW8, and CPL Joseph Njiru, PW9. According to PC Mulume, the accused led them to a house he (the accused) shared with the deceased. The police searched that house and recovered a blood-stained kitchen knife and a slipper with bloodstains. They also recovered a stool with blood on one leg and two T-shirts. PC Mulume told the court that the caretaker of the plot at the scene told the police that the house belonged to the accused and a girlfriend. This evidence differs from that of CPL Njiru who is the investigating officer. CPL Njiru told the court that:

“Before taking the body (of the deceased) to the mortuary we asked the accused where he had picked the luggage from. He led us to a house in Ziwani. He told us he had picked the luggage from the plot he led us to. We found the door open and we entered into the plot. We asked the tenants the specific number of the house. They were iron sheet houses. They (tenants) were unable to tell us who lives in that house. We were shown the landlady. We asked her. She told us that the tenant was deceased used to cohabit with Kim.”

It is the evidence of CPL Njiru that is in tandem with the evidence of PW1, PW2 and PW3 who live at the plot in question. PC Mulume's evidence cannot be true in my view because it is not true according to the evidence that the accused lived in that house or that he lived with the deceased.

I have considered the defence of the accused and find it plausible. His account of events offers a reasonable explanation as to how he came about the bags containing the remains of the deceased and her personal items. His explanation of the events of that night cast doubts in my mind that he had anything to do with the death of the deceased. His only mistake in the whole thing is his ignorance and perhaps desire to earn money at any cost. This made him careless to find out what he was carrying. Had he not been ignorant he would have questioned the kind of goods he was carrying and dumping in the river at the wee hours of that morning.

After careful reading, consideration and evaluation of the evidence on record, I find and so hold that I am convinced that the accused did not take part in killing the deceased. He did not commit this offence and therefore the prosecution has failed to prove the other ingredients of murder, whether the accused is the person who killed the deceased and whether he possessed malice aforethought. I conclude by stating that the accused is not guilty of murder as charged. I order that he be set free immediately unless for any other lawful cause he is held in custody. Orders shall issue accordingly.

Delivered, dated and signed this 2nd day of May 2019.

S. N. Mutuku

Judge