



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

CRIMINAL CASE NO. 12 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

ARNOLD OUMA MUNYEKENYE.....ACCUSED

JUDGMENT

1. **Arnold Ouma Munyekenye** is charged with an offence of murder contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars of the offence are that on the 5th day of March 2014, at **Ekisumu** village, in **Sikinga** sub-location of **Busia** County, murdered **Pascal Orukana**.
3. The prosecution case is that on the material day the accused went to the home of the deceased at 11p.m. to demand for his hoe which had been taken there for fixing of a handle. When the deceased asked him why he went for the hoe that late, he went away. Shortly thereafter he returned and knocked at the door. When the deceased opened for him, he stabbed him. The deceased succumbed to the stab wound while undergoing treatment.
4. **Arnold Ouma Munyekenye** in his defence contended that he accompanied the deceased to his home to collect his hoe. After the wife of the deceased had served them with food, he left with the hoe. The deceased pursued him and attacked him claiming that he was not to go with the hoe. A struggle ensued and both of them fell down. They stood and each went to his home.
5. The issues for determination are:
 - a) Which of the two versions of the incident is believable;
 - b) Whether the prosecution proved that the accused inflicted the fatal injuries to the deceased; and
 - c) Whether the offence of murder was established.
6. Celestine Nabwire (PW1) is the widow of the deceased. She testified that at about 11p.m. on 5th March 2014, she was in bed with the deceased. There was a knocked at their door and the accused said he wanted to speak with the deceased. When the deceased opened for him, the accused asked for his hoe. The deceased asked him why he was going for it that late and in any case, he was not the one who had taken it there. The accused left and returned after about ten minutes. When the deceased opened for him he stabbed him.
7. On the other hand, the accused contended that he accompanied the deceased to his home after partaking chang'aa together. This was for the purpose of picking his hoe that had been taken there for the fixing of a handle. His wife served them with some food. The deceased complained to him that his wife had offended him by digging up some arrow roots where he had told her not to. When she denied, a quarrel erupted between the couple and he intervened. The deceased was not pleased by his intervention. He picked his hoe and left. The deceased then called him from behind and told him not to go with the hoe. The deceased hit him on the back with the hoe handle and on the mouth where he knocked out one tooth. He held him and a struggle ensued between them. Other than the hoe the deceased had a knife. When they were struggling, the fell down at a place where there were tree stumps. Each of them went to their respective homes.
8. When Celestine Nabwire (PW1), the widow of the deceased testified, she was not confronted with the facts of the version tendered by the accused. This there is a clear indication that the defence of the accused was an afterthought. The version by the prosecution was at the time of post mortem, only one stab wound was noted on the left abdomen. The minor perforations were made during the medical intervention. This bolstered the version by the widow of how the incident occurred. I therefore dismiss the defence of the accused as an afterthought.

9. The medical evidence by Dr. Muchana (PW8) on behalf of Dr. Rosaline Malangachi was that the deceased died of cardiopulmonary arrest due to septicemia from the stab wound. It is evident therefore, that the prosecution proved to the required standards that the accused inflicted the fatal injuries to the deceased.

10. In order to establish the offence of murder, in addition to establishing that the accused caused the fatal blow, the prosecution must prove that an accused person charged with murder had malice aforethought. This is the requisite *mens rea* for the offence of murder. On malice aforethought section 206 of the Penal Code provides:

Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances—

(a) an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;

(b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;

(c) an intent to commit a felony;

(d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.

The evidence of Celestine Nabwire (PW1) the widow of the deceased demonstrate that the accused returned a second time to their house the same night while armed. When the deceased opened for him, she only heard him cry that the accused had stabbed him. It is evident that the second trip was solely to stab the deceased. I therefore find that the stabbing of the deceased by the accused, proved he had the requisite *mens rea*. The offence of murder was proved beyond any reasonable doubt.

11. From the foregoing analysis of the evidence on record, I find that the prosecution has proved the offence of murder contrary to section 204 of the Penal Code. I find him guilty and accordingly convict him.

DELIVERED and SIGNED at BUSIA this 13th day of June, 2019

KIARIE WAWERU KIARIE

JUDGE