



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO.41 OF 2017**

**REPUBLIC.....PROSECUTION**

**VERSUS**

**PAUL KINOTI MAORE.....ACCUSED**

**JUDGMENT**

The accused Paul Kinoti Maore is charged with the offence of murder contrary to section 203 as read with section 204 of the penal code.

The particulars are that Paul Kinoti Maore on or between the 27<sup>th</sup> and 28<sup>th</sup> day of April 2017 at Mituati Market Kabachi Location in Igembe North Sub-county within Meru county murdered M'Amanja Mwambia.

PW1 the grandmother of the deceased said that the deceased told her that it was Kinoti who had stabbed him on the forehead. She said she was in the shamba when the deceased came and fell where she and Peter and Gitonga were working and she thought it was due to drunkandness but the deceased told her that Kinoti had stabbed him. She said she didn't see Kinoti stab the deceased.

PW2 said that on 27.4.2017 he was working in PW1's farm around 5.00 pm when the deceased came and lay besides the farm. When they finished working PW1 told PW2 and PW3 to carry the deceased to her home. PW2 and PW3 said the deceased told him that he was feeling pain where Paul Kinoti had stabbed him on the forehead. PW2 and PW3 said the deceased had a small injury on the forehead. PW2 said that when they went bac to PW1's home the following day to continue weeding they found the deceased had died.

PW1, PW2 and PW3 went to deceased persons sisters home to inform her about the death. PW1, PW2, PW5 together with the deceased persons sister, PW4, police Officers, PW6 and village elders visited the scene and collected the body of the deceased and Dr Kariuki performed autopsy on the body on 16 May 2016. He established cause of death as cardio respiratory arrest due to severe head injury with subdural haematoma with heavy blunt object.

The Investigating Officer CPL Komen said that it is Joshua Ntongondu, Joshua Mwiti and Johana Mugambi whom the deceased told that Paul had beaten him but the 3 refused to record their statements. PW6 the Investigating Officer said they didn't establish time or even place when the incident took place. He said accused was arrested by members of public.

PW6 said he recorded statements one month later after incident. He said the people the deceased told the accused had beaten him refused to record statements. PW6 said that PW2 said that the deceased told him accused had beat him some days before 27.4.2017.

When accused was place on defence he gave sworn statement and said the deceased was not known to him. He said that on 28.4.2017 he was at his grandfathers place where he was told to pick miraa and sell. He said on 27.4.2017 he was at his maternal grandfathers place. He said Mutuma arrested him claiming he had stolen his Ksh. 4000/= and he was taken to police station and he learnt of the offence of murder. Accused said he didn't commit the offence. He said PW2 and PW3 were not known to him. He said that PW4 was also not known to him. He said Mutuma swore to fabricate him after claiming he had stolen his money.

Upon close of prosecution and defence case, defence counsel filed written submissions which this court has considered and the issues to be determined under section 203 of Penal code are:-

1. Fact of death
2. Cause of death
3. Proof that the deceased met his death as a result of an unlawful act or omission and that the unlawful act and/or omission was actuated with malice aforethought.

4. That the perpetrator of the unlawful that was actuated by malice aforethought is the accused.

Fact of death of the deceased has been established by the prosecution witnesses and PW5 DR Siad Mohammed produced Post-Mortem Report prepared by Dr Kariuki – Exp in which it was established that the deceased died as a result of head injury with subdural haematoma with heavy blunt object. The head injury according to PW1, PW2 and PW3 was caused by a stab wound. PW1, PW2 and PW3 alleged that deceased told them that it was Paul Kinoti the accused herein who stabbed him on the forehead..

PW6 the Investigating Officer said that the 3 people who were told by the deceased that accused stabbed him refused to record a statement. It is possible that the injury was caused by a 3<sup>rd</sup> party or that the deceased sustained it in any other way.

What the Investigating officer relied upon to charge the accused is alleged death declaration made by the deceased that Kinoti son of Maore stabbed him according to PW1, or Paul Kinoti according to PW2 and Kinoti according to PW3.

This court is to establish whether the said death declaration is sufficient to find accused guilty in the absence of an eye witness.

PW1, PW2 and PW3 at first thought that the deceased was drunk as usual and when they were leaving the farm PW1 told PW2 and PW3 not to leave him at the farm. PW2 and PW3 took him to a house within PW1's home and left him lying on the floor and that he told them Paul had stabbed him. PW1 said she went to check on him at 4.00 am – that is when he told her Kinoti son of Maore had stabbed him.

PW6 didn't give reason why he didn't immediately charge the accused person until after one month. He said the people who were told by the deceased that accused had stabbed him refused to record statements. Can it be true that PW1, PW2 and PW3 were also told by the deceased that accused stabbed him.

There is very strong doubt as to the truthfulness of what PW1, PW2 and PW3 said inconsideration that there was no eye witness or in consideration that instead of taking the deceased to hospital on learning he had been stabbed they left him to lie on the floor overnight.

This court finds that prosecution evidence is not sufficient to find accused guilty. He is acquitted under S.322 CPC.

**HON A. ONG'INJO**

**JUDGE**

**JUDGMENT DELIVERED, DATED AND SIGNED IN COURT ON 13<sup>TH</sup> DAY OF JUNE 2019.**

**In the presence of :**

C/A: Kinoti

State : Mr Maina for state

Accused:- Present in person

Mr Ngugi holding brief for Thangicia for accused.

**HON A. ONG'INJO**

**JUDGE**

**Court**

Copies of judgment to be supplied to defence and state Counsel.

**HON A. ONG'INJO**

**JUDGE**