



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 49 OF 2015**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JULIUS MWENDA.....ACCUSED**

**JUDGEMENT**

The accused Julius Mwenda faces the charge of Murder contrary to section 203 as read with section 204 of the penal code.

Particulars are that Julius Mwenda on the 30th day of June 2015 at Mutethia village, Barangu Sublocation Timau in Buuri Sub-county within Meru county murdered Saverio Murungi.

The prosecution case was that Joseph Kithure had hired Julius Mwenda and Murungi to plough his land and that on 30.6.2015 Julius asked for money saying his mother was sick in hospital and he gave him money. However, at 11.00 pm Julius and Murungi came back home entered their house and started eating. PW1 then heard them quarrelling in the house and he told them to stop quarrelling and sleep. That they didn't heed his advise and the noise increased. PW1 left his house through the window since accused was near his door and was armed with fork jembe and he feared if he raised alarm accused could escape. PW1 crawled upto where the deceased lay and realised he was not breathing. He said he hid until accused went back to the house and took his clothes and left. However, accused appeared to have forgotten something and went back to the house and that is when PW1 locked the house from outside and raised alarm and neighbours came and he report what had happened.

PW1 said he left neighbours guarding the door he had locked and went to Timau police station to make a report. PW1 said the accused and deceased quarrelled from 11.00 pm to 3.00 am. He said there was bright moonlight and there was no one else at scene except accused and the deceased. PW1 said he found a knife next to the deceased Exp1.

PW2 Agnes Kathure testified that on 30.6.2015 PW1 called her by phone and told her to go to his home. That when she arrived at PW1's home he told her there was someone who had died and the person who killed him was locked in the house. PW2 advised PW1 to go and report to police after putting additional padlock to the door where assailant was kept. That when accused heard noise outside he opened a window and asked what was happening and PW2 told him someone had died outside. That police came and opened the door to house where accused had been locked and they took him to police station. PW2 said a knife was recovered besides the deceased persons body. PW2 said the accused and the deceased were not related to her but she used to hire them to work for her.

PW3 Inspector Luka Toroitich testified that on 30.6.2015 at 6.30 am PW1 went to Timau police station and reported that 2 young men had quarrelled within his home and he later found one of them dead. That he had detained the suspect in a house. That he booked report and proceeded to scene within PW1's compound. He said the deceased person's body had 2 stab wounds on left side and chest and besides the body was a knife suspected to have been used to kill the deceased- Exp1. The suspect, accused herein was taken to police station to rescue him from the crowd that was gathering at scene. That photograph of scene was taken and after completing investigations accused was arraigned in court. PW3 said the accused had bruises on the face and a bite of the right cheek. PW3 said he recorded statements of PW1, PW2 and one Anastancia as well as 2 witnesses who identified body for Post-mortem.

PW4 CPL Evans Mose took photographs on 30.6.2015 at Mutethia village where the deceased was murdered at the compound of PW1. He produced the photographs EXP4(a) to (k) and certificate – Ex P3.

PW5 Dr Ayub Gitaka produced Post-mortem report in respect of Saverio Murungi the deceased herein. He established cause of death as multiple penetrating chest wounds with punctured ventricle and massive bilateral haemothorax – Exp5 – Post-mortem Report.

When placed on defence accused person, testified that on 30.6.2015 he was to go and visit his sick mother and the landlord gave him money. He said that while he was with his landlord Kithure, a stranger came and also asked for money but PW1 said he didn't have money. That PW1 gave him money and he left the stranger with PW1. That when he got to bus stage he entered a nearby bar and some customers greeted him and one of them recognised him to be the one who delivers milk. That he told the person he works for Kithure –PW1. He said that they

started drinking with the 2 people who greeted him and that the following day in the morning, he found himself at PW1's home

He said when he came to he found he had injuries on the forehead and he found himself alone in the room. He said he didn't know how he left the bar or even how he got to the house. That when he opened door to his house he found Agnes –PW2 and Kithure –PW1 and Agnes wanted to know who was the person who had died in her compound and he told her he didn't know him. He said he had not known the person who was found lying dead a short distance from his room. He said it is only him and PW1 who lived in the compound and tht other houses were not occupied. He said that the previous day he had left the stranger with PW1 and he told police as much when he was interrogated.

He said those who testified were not present when he left PW1 with the stranger. Accused said it was not true that he killed the deceased and he didn't know how he sustained injures on his forehead. Accused said he was drunk and suspected he fell and sustained injury on the forehead.

Submissions were scheduled to be filed within 14 days from 6<sup>th</sup> May 2019 when defence was closed but at the time of writing this judgment there was none in the file. The duty of this court is therefore to determine whether the prosecution has proved the ingredients of the offence of murder beyond all reasonable doubt to list:-

1. Fact of death
2. Cause of death
3. Whether cause of death was as a result of an unlawful act and/or omission actuated with malice aforethought.
4. Whether the perpetrators of the unlawful and/or omission actuated with malice aforethought was the accused person herein.

To begin with there is no dispute the deceased died and that his death was caused by penetrating chest wounds with punctured right ventricle with massive bilateral haemothorax. It was also not in dispute that the multiple chest wounds were occasioned by an unlawful act. The suspected weapon used to stab the deceased was found abandoned besides him and it was produced as ExP1. PW1 said he heard the accused and the deceased return home at 11.00 am and after eating they started quarrelling. That he told them to stop quarrelling and sleep but they didn't heed and that it was at 3.00 am that accused killed deceased.

That when accused wanted to escape PW1 locked him in the house from outside and raised alarm and PW2 the Area Manager came. Police from Timau came and rearrested accused and took him to the police station. The accused in his defence says he didn't know the deceased and that when he was given money by PW1 to go and visit his mother who was sick in hospital at hh.00 pm he left PW1 with the deceased.

He said that he entered the bar and didn't know how he got out of the bar and how he came to be at PW1's home where he found himself the next morning. The evidence of accused that he didn't know the deceased is controverted by PW1 and PW2. PW2 said that she used to hire both the deceased and accused to work for him. PW1 said the deceased and accused returned home together and after eating started to quarrel.

I do find that the evidence of PW1 and PW2 that accused and deceased knew each other is truthful. I also find that evidence of PW1 that accused and deceased quarrelled and accused killed the deceased is true. They were his workers and he had provided for them a room to live in. When he realised accused wanted to escape he locked the house from outside and called PW2 and other neighbours and also went to call the police.

This court finds that the prosecution has proved that the accused killed the deceased. However, there is evidence by PW1 and accused that points to the fact that accused and deceased must have been drunk and that they quarrelled and fought due to drunkardness. In the circumstances this court finds the accused guilty for the offence of Manslaughter and he is convicted under S. 322 CPC.

**HON A. ONG'INJO**

**JUDGE**

**RULING DELIVERED, DATED AND SIGNED IN COURT ON 6<sup>TH</sup> DAY OF JUNE 2019.**

**In the presence of :**

C/A: Mr Kinoti

Prosecutor: Mrs Mbithe for state

Accused: Present in person

Mrs Kaume Advocate for accused.

**HON A. ONG'INJO**

**JUDGE**

Ms Mbithe for state

I don't have accused persons records. I pray for time to confirm if there are records.

Order: Mention 13.6.2019 for records and mitigation.

**HON A. ONG'INJO**

**JUDGE**