



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 30 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**PATRICK GIKUNDI MUKIRI.....ACCUSED**

**JUDGEMENT**

1. **PATRICK GIKUNDI MUKIRI** (“the Accused”) has been charged with the offence of murder contrary to Section 203 as read with section 204 of the Penal Code Cap 63 of the Laws of Kenya.

2. The Particulars of the offence being that on 29<sup>th</sup> April 2014 at Kaiboo Village, Kabachi Location in Igembe North District within Meru County, the accused Murdered **BERNARD GITONGA**. He pleaded not guilty and the prosecution called six witnesses to establish its case.

3. **PW1 STEPHEN KIAMBATI**, a farmer from Mithatheni village recalled that on 29<sup>th</sup> April 2014 he was on his farm when he heard some passers-by say that there was someone dead on the farm. He went to the scene and found the deceased lying dead with miraa in his mouth. He did not see any injuries on his body. He then made a call to Selina and the Assistant Chief about the death. The chief instructed him to report the matter to the police. He did so at Kabazi police post where he found the accused had been arrested by members of the public. The police thereafter accompanied him back to the scene and collected the body for preservation at Meru Level 5 Hospital. He was able to identify the body for post mortem. The deceased and accused are known to him as they come from the same family and they had no dispute. PW1 was not at the scene when the offence was being committed.

4. **PW2 JUSTIN MWONGERA** recalled that on 29<sup>th</sup> April 2014 the accused went to his house and woke him and the deceased. They then went to pick up miraa at Muguene in Julius’ farm. At around 9:00 am the deceased and the accused person started arguing about Ksh. 80. The accused kicked the deceased in the abdomen. Thereafter the deceased then asked PW2 to give him water to drink. When he took water to him he found he was bleeding from the mouth and the nose while lying on the ground facing downwards and he was unable to take the water he had taken to him. He then went home and reported to his mother and Karimi and he told them to go see the deceased as he had been injured. His mother and Kirimia accompanied him to the farm and they found the deceased still lying on the ground. The accused by then had escaped. He is known to him because prior to the incident he used to hire him and the deceased to pick miraa. It was the deceased who owed the accused eighty shillings as there was no other dispute between them.

5. During cross examination it came out that during the incident PW2 was 12 years old and at that time he used to get hired to pick miraa. During that time Julius used to give the accused money to pay those who were picking miraa. At that time the deceased had remained with the balance.

6. **PW3 JUSTEN KANINI** who is the wife to the deceased herein told the court that on 29<sup>th</sup> April 2014 the accused came to their house at 6:00 am and woke up the deceased and Justin PW2. They used to do casual work at Julius’ farm. At around 10:30 am Justin came and reported that the accused had kicked the deceased in the stomach. She then accompanied him to the farm and they found Bernard bleeding. They were together with Justin’s mother when they found the deceased lying on the ground. Thereafter, Silas accompanied them to report at Kamerine Police Station. The police gave them a vehicle that collected the body and took it to Meru General Hospital.

7. **PW4 SILAS KIMUNGE** testified and told the court that on 29<sup>th</sup> April 2014 Justin came home at 11 am and informed him that Gikundi had been kicked Bernard and Bernard had fallen. He proceeded to where Bernard was and found him bleeding from the mouth and nose. Stephen Ntaragwi accompanied them to Kariene Police station and they reported the incident. The deceased was his brother and the accused is his cousin as their fathers were brothers. The dispute between the deceased and the accused was because of 80 shillings

8. **PW5 DR. MOHAMMED NOOR** testified and told the court that he works at Meru Level 5 Hospital as a medical officer. He has a degree in medicine and surgery from University of Nairobi. The Post Mortem of the deceased was done by Dr. Guantai who is known to him. The body was identified by Stephen Kiabati and Murungi Kiabati. The deceased had bruises on the lumbar region. An internal exam, the doctor found hemorrhage bleeding in the abdomen cavity. There was spleen laceration. It was concluded that death was caused due to cardio respiratory arrest secondary to ruptured spleen. During cross examination PW5 said that a ruptured spleen could be caused by blunt force

trauma to the abdomen.

9. **PW6 No. 56699 CPL JOSEPH KOMEN** the Investigating Officer testified and told the court that on 29<sup>th</sup> April 2014 at around 12.00 pm a report was made by Stephen Kiambati who reported that the accused person had kicked the deceased in the abdomen and he had died. The report was made to P.C Ben Wafula who was at the police station. He then informed the OCS who instructed PC Wafula to proceed to the scene. On the way they got information Patrick Gikundi the suspect was at Mtuati market and had been apprehended by members of the public. They went to the market and arrested him.

10. **DW1 PATRICK GIKUNDI** told the court that on 29<sup>th</sup> April 2014 he woke up at 6:00 am and went to wake up Bernard and they went to harvest miraa. While picking miraa Bernard fell from the miraa tree. The average miraa tree is 10 to 12 feet. They were harvesting miraa in Mzee Julius farm. They arrived at the farm at 6:30 am. Bernard fell from the miraa tree at 9:30 am. There were bananas intercropped with the miraa trees he was at alone with Bernard. It was not unusual for one to fall from a miraa tree especially during the rainy season and in April 2014 there were rain drizzles. When Bernard fell from the tree he told him he was feeling pain in his abdomen. After some few minutes Bernard told he had recovered. He left Bernard when he was going home. While he was in Mtuati town selling miraa about 4 people came and told him that he had killed someone and he was taken to Mtuati police station. He added that if he had killed Bernard he wouldn't have gone to the market rather he would have gone into hiding.

11. Having carefully considered the evidence on record the issues for determination as identified in **Republic v Mohammed Dadi Kokane & 7 others [2014] eKLR** are whether the prosecution has proved beyond reasonable doubt:-

**1. The fact of the death of the deceased.**

**2. The cause of such death.**

**3. Proof that the deceased met his death as a result of an unlawful act or omission on the part of the accused person, and lastly**

**4. Proof that the said unlawful act or omission was committed with malice aforethought.”**

12. On the fact of the death of the deceased the Prosecution witnesses as well as the accused confirmed the death of the deceased and his identity. In regard to the cause of death PW5 presented the post mortem report that was compiled by Dr. Guantai. It was indicated that the deceased had bruises on the lumbar region, hemorrhage bleeding in the abdominal cavity. He then concluded that the cause of death was cardio respiratory arrest due to a ruptured spleen. PW1 and Murugi Kiabati were able to identify the body of the deceased therefore confirming death.

13. PW2 told this court that the deceased and the accused used to pick miraa on Julius' farm. He recalled that on that fateful day the accused came and woke him and the deceased up so that they could go and pick miraa on the said farm. However, a dispute erupted between the accused and the deceased and the accused kicked the deceased in the abdomen and the deceased fell to the ground. Having been injured he asked PW2 to get him some water which he left to do but when he came back he found that the accused had ran away and the deceased was bleeding from the mouth and nose. The testimony by PW2 confirmed that it was the accused that injured the deceased. PW2 said that the accused and the deceased were arguing over the balance of Ksh. 80/- which the deceased owed the accused and which the accused demanded that time. When the deceased was unable to give him the money he kicked his abdomen, fatally injuring him. It was therefore the unlawful act of kicking that led to the injury that caused the death of the deceased.

14. Whether the action of the accused was actuated by Malice aforethought, PW2 said that the accused kicked the deceased in the abdomen for the reason the deceased owed him Ksh. 80/- only. A kick in the abdomen that resulted in the rupture of the spleen which is an internal organ must have been a very hard blow and the courts view is that such a blow must have been intended to cause death or to do grievous harm to the deceased. The accused person must have known that kicking a person in the abdomen could result in death or grievous harm. When he had kicked the deceased fatally he escaped from the scene leaving PW2 a helpless young boy with his dying Uncle. It is therefore the view of this court that the accused had malice aforethought when he kicked the deceased when demanding for a mere Ksh. 80/-.

15. The defence by the accused person that the deceased fell from a tree has been challenged by the evidence of the prosecution and the same cannot be regarded. PW2 saw him kick the deceased and he went to report to PW3 and PW4 as well as his mother and his aunt. This court is convinced that the prosecution has proved its case beyond reasonable doubt against the accused person and the accused person is found guilty as charged. He is therefore convicted under section 322 of CPC.

**HON A. ONG'INJO**

**JUDGE**

**JUDGEMENT DELIVERED, DATED AND SIGNED IN COURT ON 22<sup>ND</sup> DAY OF OCTOBER 2019.**

**In the presence of:**

C/A:

Accused:-Present in person

State: - Ms Mbithe for state

Defence Counsel:-Mr Igweta Advocate holding brief for Mokuu Advocate for accused.

**Ms Mbithe**

I pray for copies of Judgment. I pray for time to establish if accused has records.

Order: Mention 8.11.2019 for Records, Mitigations and Victim Impact Statement. Accused Remanded in Custody.

**HON A. ONG'INJO**

**JUDGE**