



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL (MURDER) NO. 36 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

M J B Alias M W.....ACCUSED

JUDGMENT

[1] The accused, **M J B** Alias **M W**, is charged with murder, contrary to S.203 read with S.204 of the Penal Code, in that on the 10th November 2007 at Mashangwa area Trans-Mara West District Narok County, he murdered H M.

[2] The case for the prosecution is grounded on the facts that the deceased and the accused were schoolmates at a primary school in Trans-Mara west District and on or about the 7th November 2007, they argued and fought. The deceased suffered injury and was rushed to hospital but died while undergoing treatment. He informed his father, **J M B (PW 3)**, that he disagreed with the accused and they fought.

[3] He (deceased) was rushed to hospital by his father who confirmed his death and identified his body for post mortem purposes.

E M (PW 1) was also informed that the accused and the deceased engaged in a fight and in the process the deceased was injured. The information was relayed to him (PW 1) by his daughter called S.

[4] An uncle to the deceased, **J G C (PW 2)**, found the deceased in the hospital with a swollen abdomen. He learnt from the deceased that he (deceased) was assaulted by the accused.

Dr. Awinda Victor Omollo (PW 4), produced the post mortem report (P.Ex 1) which showed that the deceased died from cardiorespiratory arrest due to overwhelming peritonitis resulting from blunt abdominal trauma leading to gut perforation.

[5] Following the death of the deceased, the accused was arrested after more than one year and eventually charged with the present offence.

Sgt John Mumbo Aloys (PW 5), indicated that police investigations revealed that the accused and the deceased differed, resulting in the deceased being assaulted on the abdomen by the accused who later disappeared until his arrest on the 25th April 2013.

[6] In his defence, the accused denied the offence and contended that he was neither involved in a dispute nor a fight with the deceased. He said that the deceased was his friend and schoolmate and on the 7th November 2007 they played football together after which each one of them departed for their respective homes. He only heard on the following day that the deceased was unwell and in hospital. He was however, implicated for his death due to a land dispute involving their families.

[7] From all the foregoing evidential facts, it is apparent that the death of the deceased as a result of overwhelming peritonitis occasioned by blunt trauma on the abdomen is not disputed. It was indicated that the deceased prior to his death underwent surgical procedures to correct the damage to his abdomen but this did not succeed fully.

Medical dictionaries describe **peritonitis** as being **inflammation of the peritoneum (tissue layer of cells lining the inner wall of the abdomen and pelvis)** and this can be as a result of infection or injury and bleeding.

[8] The post mortem report confirmed that the deceased suffered injury to his abdomen and that this was what caused his death through peritonitis.

The basic issue for determination in this case is definitely whether the accused was the person responsible for the injury sustained by the deceased.

The defence was an absolute denial. However, there was credible evidence from Emmanuel (PW 1), James (PW 2) and Joseph (PW 3) pointing towards the accused's culpability in the matter.

[9] Indeed, the evidence by the aforementioned witnesses discredited the defence raised by the accused and rendered it an afterthought and a pack of lies. It showed without doubt that the deceased was injured in a fight with the accused and that the injury was more or less accidental or unintentional thereby dislodging any notion that the accused acted with necessary malice aforethought in causing the injury.

[10] Consequently, it is the finding of this Court that the accused was responsible for the injury occasioned to the deceased but he did not act with the intention of killing the deceased. He did not therefore, commit the offence of murder but that of manslaughter, contrary to S.202 (1) of the Penal Code for which he is hereby found guilty and convicted accordingly.

[Delivered and signed this 9th day of May 2018]

J.R. KARANJAH

JUDGE

In the presence of

CC Mohe

State Counsel – Mr. Otieno

Accused

Mr. Ondari for accused but Mr. Nyakundi holding brief