



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAROK

CRIMINAL CASE NO. 12 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

DANIEL LANGAT.....ACCUSED

JUDGEMENT

1. The accused is charged with murder contrary to section 203 as read with section 204 of the Criminal Procedure Code [Cap 63] Laws of Kenya, in respect of the deceased, Nelson Mahenye. He pleaded not guilty.
2. The prosecution called five witnesses in support of the charge.
3. The accused gave sworn evidence and called no witnesses for his defence.
4. The prosecution through Sabai Tobias Mahenye (PW1) testified that he was the brother of the deceased person. He further testified that he worked at Kendasi Highlife Club as a watchman. He continued to testify that at midnight on 30th December, 2014 he saw the accused and three other persons entering the bar in that club and proceeded to where the deceased sat.
5. Thereafter, the accused started harassing the customers. The deceased then intervened with the purpose of pushing out the intruders, among them the accused. It is at that time that the accused got a knife and stabbed the deceased in the head. The accomplices of the accused hit the deceased using blunt weapons. The deceased fell down and the accused together with his accomplices escaped. The accused and his accomplices took a Samsung mobile phone and two thousand shillings (Kshs.2,000) from the deceased.
6. Following the attack the deceased was taken to Narok District Hospital and due to deterioration of his condition he was taken to Kenyatta National Hospital where he died on 1st January, 2015. It was the evidence of PW1 that there were bright lights in that club.
7. The evidence of PW1 is supported by that one of Steven Masero Getanyita (PW3). It was the evidence of PW3 that the deceased was selling beer, although he was a watchman in that bar in Narok town. He further testified that when the deceased saw customers fighting, he intervened with the view to separate them. As a result the accused hit the deceased on the head with a metal studded *rungu*. He also saw another man slashing the deceased with a *simi*. The accused then escaped with his accomplices and they chased him until they arrested him.
8. It was also his evidence that the fighting in which the deceased intervened was started by the accused and his accomplices. The deceased then intervened and struggled with the accused. It was his evidence that the accused and his accomplices were drunk.
9. The body of the deceased was taken for postmortem examination. The postmortem was performed by Dr. Edwin Walong (PW4). The doctor found as follows. He found that the deceased was a male African adult aged 26 years old. There was a complex laceration with abrasion measuring 10x6cm in the middle of the front part of the head. He also found that the skull was fractured on the front part of the head. According to him the cause of death was due to blunt head trauma following an assault. He then put in evidence the postmortem report as exhibit Pexh 1.
10. Under cross examination PW4 testified that a blunt trauma can arise from a sharp object such as a sword. According to him this depends on how the sharp object is used.
11. Furthermore, the prosecution called No. 62724 CPL. Bethwell Nyangate (PW5). He was the investigating officer. It was his evidence that the accused and his accomplices were refreshing themselves at Highlife bar, when a quarrel occurred between them and the deceased, who was a bar attendant. It was also his evidence that when the deceased attempted to push them from the bar they fatally injured him.

12. Furthermore, the prosecution called No. 93458 PC. Eric Kungu (PW2), who rearrested the accused from the mob that was assaulting him. It was his evidence that after being told by the OCS Narok Police Station, he rushed to the scene at Kumi Kumi area and he found the accused lying in a ditch with injuries. While at the scene PW1 told him (PW2) that the accused had attacked his brother. As a result they took the accused to Narok District Hospital for treatment. While under cross examination PW2 testified that the accused told PW2 that he had quarreled with the deceased in the night of 30/12/2014. It is this officer who recorded the OB entry of 30/12/2015, in which it was recorded that the deceased had been stabbed and robbed by three men, who were armed with a sword. He admitted that the accused was subjected to mob justice.

13. When he was placed upon his defence, the accused gave sworn evidence, in which he testified that he was at Meleli, which is a distance from Narok Town. He testified that on 31/12/2015 he had gone to see a friend by the name Onyancha in Total area within Narok town. He stayed with him until 8.00pm. Thereafter, he bought charcoal and flour and was heading home. In the course of going home, he walked past a bar when he was stopped by three men. These three men were strangers to him.

14. The three men called him a thief and attacked him. It was his evidence that the case against him was framed.

15. While under cross examination, the accused admitted that he did not have any dispute with the prosecution witnesses, all of whom he testified were strangers to him. He further testified that the prosecution witnesses were liars. Finally, he testified that the three men who attacked him threatened him with death, when he told them that he did not know a person by the name Kirui and another called Hillary. It is at that point in time, that they struck him and all of them attacked him, hitting him on the head with a bar. As a result they inflicted a cut injury in his hand. He then decided to run to the police station as the men were screaming "*thief! thief!*". In the course of escaping, he fell in a ditch from where he was rescued by the police.

16. It is important to point out that all witnesses including the accused testified before Meoli, J.

17. I have considered the totality of the prosecution evidence and that of the accused person. As a result of doing so, I find the following to be the issues for determination:

- 1) Whether or not the accused was positively identified as being one of the assailants in that Highlife Club on 30/12/2014.
- 2) Whether or not the accused caused the death of the deceased.
- 3) Whether or not the alibi defence of the accused has been disproved by the prosecution.

ISSUE 1

18. The evidence of Sabati Tobias Mahenye (PW1) and that of Steven Masero Getanyita (PW3) is that they identified the accused person as one of the three persons who assaulted the deceased person. Their evidence is that there was bright electricity light in the bar, which enabled them to identify the accused as one of the assailants. PW1 testified that the accused was armed with a knife. PW3 testified that it is the accused who hit the deceased with a metal studded *rungu* in the head. He further testified that the accused was armed with a *rungu*. He also testified that he was three metres away from both the deceased and the accused. Finally, he testified that they chased the accused and arrested him after a long chase. It was his evidence that the accused was a regular customer in that bar. There is further evidence from the investigating officer (PW5) that the accused had a quarrel with the deceased, who was a bar attendant. It was in the process of quarrelling that the accused fatally injured the deceased.

19. In response to that prosecution evidence the accused testified on oath that he was not at the scene of the attack as testified to by the prosecution witnesses. He testified that he had not known the prosecution witnesses whom he called liars. After considering the evidence of the prosecution and that of the accused, I find that the accused was positively recognized as one of the three persons who assaulted the deceased person. The circumstances which favoured his recognition were as follows. First, there was bright electricity light at the scene of the attack. Second, PW1 and 3 were close to the accused during the attack. Third, PW1 and PW3 knew the accused before this incident. In the circumstances, I find that the accused was positively recognized as one of the three assailants who attacked the deceased. I further find that PW1 and PW3 were not mistaken as to the identity of the accused. I do not believe the evidence of the accused that he was not at the scene of crime. I find the evidence of the accused to be incredible. There is no reason for the prosecution witnesses to incriminate him with this offence, when it is clear that they were strangers to him.

ISSUE 2

20. The issue as to whether the accused caused the death of the deceased is to be found in the evidence of PW1 and PW3 who saw the accused strike the deceased either with a *rungu* or a sword. The accused struck the deceased in the head causing a fracture. The report of Dr. Edwin Walong (PW4) found that the head of the deceased was fractured due to trauma on the front part of his head. It is this blunt injury trauma to the head that caused the death of the deceased. The report of the pathologist was put in evidence as a prosecution exhibit 1. The striking of the deceased in the head clearly shows that the accused and his accomplices intended to cause the death of the deceased in terms of section 206 of the Penal Code [Cap 63] Laws of Kenya. In the circumstances, I find that the accused and his accomplices caused the death of the deceased.

21. The only issue that remains for consideration is whether the offence committed is murder or manslaughter. There is ample evidence of PW1 and PW3 that the deceased intervened to separate the accused from fighting with other persons in that bar. Furthermore, there is further evidence that the accused and deceased had quarreled in the course of that separation. There is no evidence to show that the accused was acting in self defence or not. However, there is evidence that the accused and his accomplices were drunk. In the circumstances, I find that the offence disclosed by the evidence is that of manslaughter contrary to section 205 of the Penal Code. It therefore follows that the accused is guilty of that offence and I convict him accordingly under section 322 of the Criminal Procedure Code [Cap 75] Laws of Kenya.

Judgement Delivered in open court at Narok this 18th day of September, 2018

in the presence of Mr. Omwega for the state and Ms. Adallah holding brief for Mr. Kilele for the accused

J. M. BWONWONGA

JUDGE

18/9/2018