



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 64 OF 2018**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**DECKENS MURANGIRI KUBAI**

**PATRICK KAREITHI MUTHURI**

**BONFACE KIMATHI NTOINTHA .....ACCUSED**

**JUDGMENT**

The accused Deckens Murangiri Kubai, Patrick Kareithi Muthuri and Boniface Kimatha Ntoitha were jointly charged with the offence of murder contrary to section 203 as read with section 204 of the penal code.

Particulars were that the accused persons herein Deckens Murangiri Kubai, Patrick Kareithi Kubai alias Muthuri, Boniface Kimathi Ntoitha on the 29<sup>th</sup> day of September 2012 at Maibuki village, Kabachi Location Igembe North District within Meru County jointly murdered Julius Mungathia.

The prosecution's evidence was tendered by 5 witnesses, the evidence of the 1<sup>st</sup> 3 witnesses having been recorded by Hon Justice Wendoh. Upon taking the proceedings this court took directions on 5<sup>th</sup> March 2017 and recorded the evidence of 2 prosecution witnesses as well as accused person's evidence in defence.

The prosecution's case was that the deceased was at the shopping centre taking tea when accused persons confronted him and to avoid the attack he tried to run away but fell in a ditch due to darkness and accused persons who were pursuing him caught up and cut him on the head.

That when members of public raised alarm and rushed to the scene the accused persons ran away. That the deceased persons brother tried to rush him to hospital but he was pronounced dead on arrival at Maua Methodist Hospital.

The Investigative Officer said that the initial attack at shop was in a lighted place as there was security light and the witnesses were familiar with both the accused persons and the deceased and that the deceased and accused persons are neighbours.

In cross examination PW5 said that Accused 1 was not mentioned by deceased person's brother as one of the attackers. He said deceased persons brother mentioned names of five suspects who committed murder. The Investigative Officer said the names of suspects in report as reported statement and those in investigations diary were different. He said Catherine didn't mention that Murangiri was with the deceased where they were taking tea. She said the deceased was with Manyua Karuti and Murathiri Mberia.

The Investigative Officer testified that Grace said she saw Julius Kimathi Ndoitha Murangiri Kubai and Bundi were all armed with pangas and that the 3 chased Julius towards the shamba and she saw Kimathi cut him on the head and others beat him on the shoulders. When PW5 was cross examined by Ms Muna Advocate for A2, PW5/Investigative Officer said that Patrick Kareithi was not mentioned as having committed offence.

That Grace didn't mention A2 Investigative Officer testified that shortly before the deceased was attacked and murdered the accused persons had gone to look for him at home and when they didn't find him they proceeded to the trading centre.

PW4 Dr Salesius Muriungi conducted post mortem on the body of Julius Mungathia on 9<sup>th</sup> November 2012 at Maua Methodist Hospital Mortuary and

was of the opinion that cause of death was cardiac arrest due to intracranial haemorrhage and brain tissue damage caused by a deep cut on the

head of a sharp heavy object. He produced the PM Report as ExP1.

PW1 and PW3 Grace Muthenya and Catherine Kamuria was to the effect they saw the 3 accused persons together with 2 others not before court were armed with pangas and they chased the deceased and when he fell in a ditch they cut him. That it is A3 who cut his head with a panga while the others beat him on other parts of the body including shoulders and when PW3 who had seen the 5 go through the home looking for the deceased took him to hospital he was pronounced dead.

When placed on defence A1 said in sworn statement that he was 16 years when he was arrested in 2-13. He recounted what happened on 29.9.2012 the day the deceased died. He said that it is A3 whom he called as Justus who hired him to pick miraa and he escorted miraa to Mutuati where he stayed upto 11.00 pm when miraa was loaded on vehicles and he went back home. He said on arrest he was charged for stealing miraa but he was released when complainant didn't come to court.

He said he was not with A2 when offence was committed. He said PW1 and PW2 fabricated him because they related to the deceased and PW1. He said he was arrested in June 2013 but he didn't escape. He said he was still working for A3 in the same area together with James Kaberia. He said he knew A2 as they went to school together but he didn't know where he was arrested. He said A3 went to visit him at the police station. He said his age and mental assessment are in court.

A2 said that the names on charge sheet are not his. He produced ID card with the names Javelick Muruthi. He said he was arrested on 3.12.2013 and ID was issued on 13.11.2013. He said he learnt on 30.10.2012 that Julius Mungathia had been murdered by Julius Kaberia and Murathuri Mberia.

He said he knew A1 and A3 as they come from same village but he didn't see them on 29.12.2012 because he was at Mutuati Market watching a movie. He said his home is 4KM away. He said he walked home and arrived at 9.40 pm and went to bed at 10.00 pm. He said evidence of prosecution witnesses was not true. He said he heard it was Murathiri and Julius Kaberia who murdered the deceased. He said he was not arrested together with A1 and A2. He confirmed A1 was with him in same school but not same class. He said he was at Mutuati market with Baria Mairati on 29.12.2012. He said he didn't know owner of movie shop. He said he was arrested on 3.12.2013 by APC Muge but he didn't kill anyone.

A3 also gave sworn evidence and claimed the names he was being referred to are not his. He produced ID 32257547 with the names Justu Kimathi Ntoitha. He said he knew the deceased but had no relationship with him. He said on 29.10.2012 he left his miraa farm at 8.00 am under supervision of A1 and he proceeded to Kabachi where he had another miraa farm and the miraa was being picked. He said he left Kabachi at 2.00 pm to go to Mutuati market and at 7.00 pm A1 arrived with the miraa. That at 10.00 pm A1 went home and left him at Mutuati as he waited for the money for his miraa. He said it was not true that he committed murder of deceased. He said evidence of PW1 and PW2 as to time of death differed with evidence of John PW3 who said his brother was murdered at 8.00 pm.

He said he didn't escape from the area of murder but was arrested in Laare over miraa which he had leased. He said that PW2 had a grudge with him after claiming he defiled her 11 years old daughter. He said he didn't know names of PW2's daughter. A3 said he had hired A2 to pick his miraa. He said there were many people at Mutuati including David Mwendu and Joshua but they are not his witnesses. He said he was not at scene of murder.

He said he learnt at 11.00 pm that deceased had died. He said that Julius Kaberia was arrested but released.

The prosecution and defence filed written submissions urging the court to finding accused persons guilty and not guilty respectively. The issues for determination are whether:-

1. Fact of death has been proved?
2. Whether it has been proved that the death of the deceased by the accused persons and if so whether the accused persons had malice aforethought.

PW3 testified that accused persons were among 5 people who went to their home looking for the deceased and when they didn't find him they proceeded to look for him. After a short while PW1 and PW2 called and reported that A3 had cut and injured the deceased.

PW1 and PW2 said that 5 people armed with pangas chased the deceased and when he fell in a ditch in a banana plantation when he was running away from the 5 attackers A3 cut him on the head while the others beat him up.

PW1 and PW2 said they came from same village as accused persons and the deceased and they knew them very well. They also said there was light at the shops and they were able to recognise accused persons in the group of 5.

Accused persons claim the names to which they are referred are not theirs and that they were fabricated because the witnesses are related to the deceased. The accused person brother in his report to police didn't give their names to police but PW1 and PW2 are the ones who were at scene and said that A3 cut the deceased on the head while the others including A1 and A2 and 2 others whose names were given by PW3 to Police joined in beating the deceased and he sustained injuries that resulted into his death.

The accused persons disappeared from the area immediately after committing the murder and were only arrested almost one year after the commission of the offence at different times and locations.

This court finds that the prosecution by evidence of PW1, PW2, PW3 and PW4 confirmed that deceased died and he died as a result of cardiac arrest due to intracranial haemorrhage and brain damage caused by a deep cut to the head inflicted by a sharp heavy object as per Ex

P1 – Post Mortem Report.

I do find that the evidence of PW1 and PW3 have proved by their corroborated evidence that accused persons herein did cut the deceased with a panga after he fell in a ditch. It was the screams of PW1 and PW2 that made them run away after neighbours started coming.

That the accused persons common intention was to kill the deceased is confirmed by evidence of PW3 the deceased persons brother who said that the accused persons went looking for his brother at home and when they didn't find him they went to look for him at the trading centre. PW1 and PW2 said all the 5 were armed with pangas. When the deceased ran away from them they pursued him with fury and when he fell in a ditch A3 cut him on the head with a panga while the rest of his companion beat him up.

PW1 , PW2 and PW3 were not shown to have had any reason to implicate the 3 accused persons in the murder. This court therefore finds that accused persons are guilty as charged and they are convicted under Section 215 C.P.C.

**HON. A.ONG'INJO**

**JUDGE**

**JUDGEMENT DELIVERED, DATED AND SIGNED IN COURT ON 18<sup>TH</sup> OCTOBER 2018.**

**HON. A.MABEYA**

**JUDGE**