



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 70 OF 2013

REPUBLIC.....PROSECUTION

VERSUS

BASILIO MUTIGA NTOITI.....ACCUSED

JUDGMENT

The accused Basilio Mutiga Ntoiti was charged with the offence of murder contrary to section 203 as read with section 204 of the penal code.

Particulars were that Basilio Mutiga Ntoiti on the night of 27th July 2013 at Pembe Nne village Ntumbire Market in Buuri Sub-county within Meru County murdered David Muriki.

The prosecution's case was supported by evidence of 5 witnesses, PW5 Dr Guyo of Isiolo County Hospital produced post-mortem Report prepared by Dr Jane who conducted autopsy on the body of the deceased David Muriki who was murdered on the night of 27th July 2013. From the autopsy cause of death was established as cardio pulmonary arrest secondary to severe haemorrhage due to rupture spleen and kidney caused by sharp object. He said the kind of wound on the deceased body made the doctor conclude that a sharp object inflicted the injury.

PW4 Inspector Charles Mwanyalu was the Investigating officer. He and P.C Mwewe visited scene of murder. He said he observed 2 stab wounds on the body of the deceased on the waist on the left side. He said the body was lying outside the house.

PW4 was stood down to refresh his memory on 23.6.2016 but when matter came up for hearing subsequently it was said he had since retired. The Investigative officer didn't testify.

PW3 Martin Muthuri testified that on 27.7.2013 at about 8.00 pm the deceased came into his hotel in Pembe Nne. He said after one or 2 minutes another person entered. He didn't know the name of the person who entered and he had never seen him before. He said he learnt he was Kaberia. He said both Muriki and Kaberia were drunk. That Kaberia also ordered for tea. He said Muriki and Kaberia sat on one table. He said that Kaberia started quarrelling with Muriki. PW3 said he didn't understand why they were quarrelling and throwing their hands at each other. PW3 said there were about 20 people in the hotel at that time. He gave the names of PW1 and other people as having been in the hotel on the material evening/night. He said the hotel had lights on from 2 bulbs.

PW3 said that at 10.00 pm he closed the hotel and went to sleep and the next morning he got a report that Muriki was stabbed by Kaberia. He said Stephen was also injured. PW3 was then called to go and record a statement. He identified accused person in court as Kaberia.

He said in cross examination that he recorded his statement on 28.7.2013. he said he learnt of Muriki's death through a phone call. He said he was with Steve on 26.7.2013. From cross examination of PW3, he says he removed accused and deceased from the hotel and he didn't know where they went after that. PW3 said he never heard what the accused and deceased uttered when quarrelling at the hotel. PW3 said he didn't know how death occurred. He said there was no fight in the hotel.

PW2 Naomi Nduru was woken up by Steven Mukaria on 27th July 2013 at midnight to alert her that Mukiri was lying outside the house. She said Mukaria used to live in her home. She said she went out and listened to Mukiri's heart beat and there was none. She said Steven was a family friend and lived in her home. He said Mukiri's body was lying just outside the house where they used to live. She said Steven and Kaberia used to sleep in same house. She said she had employed them.

That Muriki stayed in a separate house on the side about 20 metres. She said Mukiri and Mukaria were not employed by her but she had given them free residence. She said when she saw Mukiri's body she screamed and villagers came. She said Steven had also called Julia and Nkirote. She said Rebecca Naitore also came to scene. She said the body of Mukiri was taken to Isiolo hospital the next day at 10.00 am. She said that when they were at scene Kaberia disappeared. PW2 said that Steven Kaberia and Mukiri had lived peacefully and were friends. PW2 said that she didn't see the deceased and the accused on the material night. She said the deceased body was found lying besides door to Stevens house. She said she didn't know who killed Mukiri and she didn't hear any screams.

PW1 Steven Mukaria testified that on 27.7.2013 at 9.00 p.m he was at Muthuri's (PW7) hotel in Pembe Nne hotel waiting news when he heard a scuffle at the back of the hotel. He said there were over 10 people at the hotel. He said it was Muriki and Kaberia who had a scuffle. He identified Kaberia as accused in the dock. He said that the 2 held each other by the shirt and the owner of the hotel separated them and took Kaberia outside. That at about 10.00 pm PW3 locked the hotel and he and Muriki went home. He said they lived with Muriki and Kaberia in same home. He said Kaberia was employed by Naomi Nduru as shamba boy. He said Mukiri stayed in separate house whereas he and Kaberia lived in same house. PW1 said the house Muriki lived in was 5 metres apart from their house. He said he had lived with accused for 5 months. He said Kaberia found him at PW2's homestead. He said he had lived there for 2 years. He said the deceased had lived there for 2 years. He said the deceased had lived there longer than him as he found him there. He said he and Muriki reached the house at about 10.30 p.m. and they entered their respective houses and slept. He said he found Kaberia in the house and lights were on.

That at about midnight he heard people fighting outside and when he got up and opened the door he found Kaberia and Muriki holding each other by the neck. He said the bright moon light enabled him see the 2 people who were fighting. He said the 2 were drunk.

He said the 2 behaved like drunkard in the hotel and that on the way Mukiris walked in drunken way. He said Kaberia punched Mukiri and he fell. He said when he noticed Mukiri was injured he called Mama Nkirote and Naomi to come and help. PW1 said the accused disappeared from scene.

PW1 said the deceased was bleeding from left side of the ribs which had been stabbed. PW1 said murder was reported and police came to collect the body and recorded his statement. PW1 said accused introduced himself as Kaberi M'Rimberia when he was employed by Naomi. PW1 said he related well with accused and deceased and that the deceased and accused also related well. When placed on defence, the accused gave sworn statement and said that on 27.7.2013 he went to Pembe Nee centre and the deceased joined him at a hotel at 7.00 pm. He said that he was with Kimathi, Stephen, Patrick and many other customers. He said they took tea upto 8.00 pm . one paid for his tea as well as that of the deceased then left to go home. He said there was no incident at the hotel as they had general talks. He said when he got home he spoke to his employers son and then went to sleep . he said that at about midnight, Stephen – PW1, Muriki the deceased, Patrick and Kimathi came while making a lot of noise as they were drunk. That Stephen woke him up and he opened the door. That when he opened the door all in company of Stephen wanted to enter but he pushed the door back and then went to sleep. That after he went back to sleep, Stephen (PW1) went to wake up Naomi his employer and told her Muriki had fallen.

That Mama Kibiti – Naomi came and touched Muriki and said he was dead. That the employer told him to take care of the body until the next morning. He said the body was collected at 10.00 am the following morning. He said police found him at the canteen at Pembe Tano trading centre and arrested him. He said Muriki must have sustained injuries when he pushed them with the door and he fell. Accused said he didn't have any sharp object and he didn't stab the deceased. Accused denied that he fought with the deceased in the hotel. He denies that he and the deceased were chased out of the hotel by Martin Muthuri. He said he didn't escape but was arrested by a young man from the farm.

From the evidence on record for the prosecution and defence this court is to determine whether the prosecution had proved the 3 ingredients of murder namely:-

- Death
- That death was caused by accused.
- That the action by accused was actuated by malice aforethought.

Accused person concedes/admits fact that he was at Martin Muthuri's hotel at Pember Nne on the night of 27.7.2013 in company of PW1 and the deceased. He however declines that he had a scuffle with the deceased while at the hotel. He also denies that he was chased out of the hotel. Martin Muthuri and Stephen confirm that the 2 had a commotion and Stephen said that accused was send away from the hotel.

Although accused denies having stabbed the deceased, Stephen – PW1 said he was woken up from sleep by a commotion of people fighting outside and when he opened he found the deceased and the accused holding each other's shirts as accused said the deceased would know who he was. That the accused person punched the deceased and he fell. That when he called Mama Nkirote and accused persons employer – PW2 – Naomi Nduru and she confirmed the deceased was dead, accused disappeared from the scene. Stephen said he was at the hotel watching news and that it was accused and the deceased who behaved like they were drunk. Stephen wasn't drunk. Stephen said he went back home in company of Muriki and not any other person and accused persons claim that he was with other 2 people who wanted to force their way into the house is not substantiated. The accused person waited until his roommate Stephen had slept and he went to take revenge on Mukiri deep in the night. He escaped and it is not true he was at scene when Mukiri's body was being collected. The body was examined and post-mortem Report as well as evidence of Stephen – PW1 and Naomi Nduru confirms that Mukiri was actually murdered. Although the Investigative Officer didn't complete his testimony after being stood down, his investigations/testimony entailed what the witnesses herein told him and therefore failure to testify is of no consequence to the prosecution case. This court finds that the prosecution has proved beyond all reasonable doubt that the accused murdered David Muriki. The accused is found guilty and is convicted under S.215 C.P.C.

HON. A.ONG'INJO

JUDGE

JUDGMENT SIGNED, DELIVERED AND DATED THIS 4TH DAY OF OCTOBER 2018.

In the presence:

C/A: Penina

State: Mrs Mwathi

Accused: M/s Nelima Advocate for Holding brief for Mr D.J. Mbaya Advocate for accused.

Mrs Mwathi

I don't have records for accused. He may be treated as 1st offender.

Ms Nelima Advocate in Mitigation for Accused

Accused is a 1st offender. He is remorseful. There was a scuffle between accused and deceased that led to the death. Accused is aged 40 years and has been in custody since 2013.

HON. A.ONG'INJO

JUDGE