



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 8 OF 2013

REPUBLIC PROSECUTION

VS

LAWRENCE KAAI MURIUKI ACCUSED

JUDGMENT

The accused Lawrence Kaai Muriuki was charged with the offence of murder contrary to section 203 as read with section 204 of the penal code. Particulars were that Lawrence Kaai Muriuki on the 23rd day of December 2011 at Abonthea village, Nkuene – Kioro sublocation Ntuene Location in Central Imenti sub/county within Meru county murdered Benedict Kirimania M’Impai.

The prosecution called 9 witnesses to support its case that the accused murdered the deceased herein starting with deceased owner daughter PW6 – Frida Karemi who said that on material day at 5.00 pm the deceased had gone to the farm to get grass for his animals. That she saw the accused passed by their home armed with a panga and hammer. That he went through the maize plantation towards where deceased was cutting grass and hit the deceased with a hammer on the head and also cut him. That when she saw this happen she ran back to the house as she was shocked. That she stayed in the house for sometime before going to call her aunty Agnes to come and help take deceased to hospital. That when she went back home she found her father had died. Police were called to collect the body at 1.00 a.m in the night. She said that accused who is her cousin had a dispute with her brother and that accused wanted to kill her father and grab their land. That Kaai the accused claimed the deceased was a witch. She said the dispute between accused and her father had been presented before the chief.

PW7 the deceased persons sister said that the deceased had restrained accused from selling land that belonged to the late David Kibore – a brother to the deceased which was bone of contention. She said the land was being used by the deceased persons wife and brothers to accused. PW7 said the accused persons father and the deceased as well as other sons of M’Impwi got their inheritance from her father and it is only title deeds which had not been processed. PW1 the deceased persons wife testified that on 23.12.2011, the deceased went to work and was to return at 1.00 pm so she could also leave but she left before he returned. That before she left Kaai the accused person was his fathers homestead and he was pacing up and down while armed with a panga. She said he was restless. That when she returned home she found a crowd of people at her gate and saw her husband lying at the gate and the body was covered with the sack he had gone to use to carry grass for the cows. She said the husband had a cut on the forehead on the right side. That there was also a blunt injury on the left side of the forehead. That the body was collected at 1.00 am. She said that from the time her husband was murdered she didn’t see the accused. She said she saw him 6 months later. PW1 said the accused person had sour relationship with the deceased as he used to claim the deceased was a witch and there was a time he dared him to come out at 1.00 am so they could fight while he was armed with a panga and banged their door. She said when she spotted Kaai after 6 months she alerted chief who called police and he was arrested. PW1 said she left her daughter Frida at home on 23.12.2011.

PW2 the accuse persons wife said that on the material day she returned home at 5.00 pm and found the accused had returned and after taking a bath saw him again. That the following day police officers went to ask for accused and she told them he had not returned. She said police came in the morning and took clothes that accused had changed. She said it was after one week that accused called to tell her that a cousin had gotten him a job. She said the accused returned home after one year. She said she recorded her statement with police. She said she had cohabited with the accused at a rental house in Kaguna Market for one year. She said accused used to work at a quarry. She said the accused didn’t take any tools from the house when he left on material day and it was normal for him to take a bath after work. She said the accused told him that his cousin Moses got him a job in Nairobi. She said she didn’t know accused went home.

PW3 said that on the material day at 8.00 am while going to work he met the accused going home from Kanguma market and when he greeted the accused he responded in a cold manner and PW3 said he felt there was something a miss. That while at work at the quarry an old man known as Bernard came and informed him his father was sick. He kept his tools and proceeded home only to find his father lying down and was covered with a sack and he was in shock. He saw he had a cut on right side of his head and a blunt injury on the left side of his head and he was dead. The chief came and called police. That the police came the same night and collected the body to the mortuary. He said that Lawrence had been disturbing his father since his childhood. That whenever he was drunk he could dare the deceased to come out so he could kill him, claiming the deceased had bewitched him so he could not get money like other people. He said Lawrence was not at scene where deceased was lying. He said since 23.12.2011 he was only seeing him in court again as he escaped from home. He said when he met Lawrence he was carrying a panga.

PW4 Benjamin Kirimi passed by deceased persons home while riding his motorbike and saw the deceased cutting grass. After dropping a passenger about 50 metres away he heard screams and on the way back found the deceased had fallen and was bleeding from the head. He said he saw a big cut and deceased face was covered with blood. He made phone call to chief and Area Manager as well as neighbours Benard Muthaura and others. He went to get Daniel and on returning found members of public had gathered. That when he turned the deceased to clean and take him to hospital he found he was already dead. That he waited until the chief came with police and body was collected. He said he was 1st to arrive at scene and the deceased was still alive but groaning.

PW5 Nelson Kijogi received phone call on 24.12.2012 from Joel Nkinonchio who informed him his brother Benedict had been killed. That on his way he met police vehicle and went with them to the station. On 4.1.2013 he identified the body of his brother for purposes of post mortem which was done by Dr Karamba and Report produced by Dr Njeru – PW9.

PW8 – Chief Inspector Renson Gaimbo investigated the offence of murder and on 4.1.2013 in company of P. C. Abdalla and Maiyo they were led to a house in Kaguma market where accused was hiding and he was apprehended and charge preferred. When the prosecution closed its case the accused was placed on defence and in sworn statement and said the deceased was his uncle. That when his parents died it is the deceased who remained as his father. He said they had dispute over land which the deceased suspected his younger brother was inciting the accused and he told him it was not true. He said it is his uncle David Kubai who sold land and the deceased thought it was accused. The accused said when his uncle was murdered he was not present. He said he was at his place of work in Nairobi. He said he left for Nairobi on 23.12.2011. He said he was at his place of work at quarry upto 1.00 pm. When his cousin Murerwa called and informed him there was a vacancy for work at Dagoretti. That he got his daily wages, went back to the house, took a shower, changed and left for Nairobi. He said the people he met on his way home didn't testify. He said Nelson Njogi does not relate well with him. Accused said he learnt his uncle had been killed and he returned home in March 2012. He said no family member explained to him cause of his uncles murder.

That he went back to Nairobi and continued work at Karen upto June 2012. That in October 2012 when he returned home he felt sick and went back to Nairobi. On 15.11.2012 he returned home and stayed at Kaguma market. He said he was only arrested on 4.1.2013 to assist with investigations. He said the family members coached Frida to say that she saw him commit murder. He said when report was made, identity of the assailant was not given and yet all family members knew him very well.

In cross examination accused didn't know particulars of land his fathers uncle gave his father. Accused could not remember contact of Moses Murerwa whom he alleged called him for a job in Nairobi. He didn't have receipt for the matatu he boarded on 23.12.2011. he said Nelson bewitched him and killed his parents. He said he was suspected of murder because he had confronted the deceased over land dispute.

From evidence or record for the prosecution and defence the issues are to be determined are:-

1. Cause of death of the deceased.
2. Whether accused person did or omitted to do something that caused the death
3. Whether what the accused did or omitted to do was actuated with malice aforethought.

The deceased person's son said that the accused person went home on the material morning while armed with a panga and he looked cold as if something was amiss. The deceased person's wife said she left accused person at his father's homestead and he was armed with a panga and was pacing up and down the homestead.

The deceased persons daughter said when the deceased came back at 5.00 pm he went to cut grass for the cows and that is when she saw accused go to where the deceased was through the maize plantation and hit him with a hammer and also cut him on the head and the deceased fell to the ground while bleeding.

The accused person's wife PW2 said accused left on the morning to go to his place of work at the quarry. The accused claims he went to the quarry and left at 1.00 p.m. He doesn't controvert evidence of the deceased persons son that he went home on the material morning. He doesn't deny PW1's evidence that she left him while armed with a panga and was pacing up and down at his father's homestead. He said that he had gone to Nairobi by the time the deceased was killed but his wife said she found accused had returned home and after taking a shower he left and didn't return. That police came looking for him the following morning and he was not at home. PW2 said that it was after one week that accused called to say he got a job in Nairobi. PW2 doesn't say the kind of job accused said he got in Nairobi. Accused didn't call his cousin Moses Murerwa to confirm he called the accused to and work in Nairobi. When PW2 allegedly received phone call from accused one week after the murder, she must have told accused that his uncle had been murdered and that police had come looking for him in connection with the murder but accused person didn't return home for the funeral of his beloved uncle and he didn't report to police. He was arrested on 4.1.2013 over one year after the offence was committed.

The accused didn't tell the court who at the quarry paid his wages for 23.12.2011 before he allegedly left for Nairobi. That person could have confirmed that he was at work. In the absence of such evidence this court believes the evidence of the deceased persons son and wife to the effect that accused was at his fathers homestead probably planning to ambush/lure and kill the deceased. In deed when only the deceased persons daughter was at home and the deceased without notice of impending danger went to fetch grass for his cows the accused person caught him unawares and hit him on the head and also cut him on the head with a panga.

The post-mortem report confirms the deceased had a depressed fracture on left from the region of the head with comminution and intracranial haemorrhage which caused his death.

The offence was committed late in the evening before fall of darkness and this court believes that Frida Karemi must have seen the accused commit murder. She rushed to her aunts place – PW7 to call for help and PW7 confirms that she was in shock and that is reason she was unable to talk then to give PW7 name of culprit.

This court finds that accused was not acting in good faith when he was armed with panga and hammer pacing up and down the homestead. PW1, the deceased persons wife, PW7 the deceased persons sister, PW3 the deceased persons son all said that the accused person had always disturbed the deceased and many times dared him to a fight threatening to kill him and on many occasions at night disturbed him whenever drunk. Accused confirms that there was a land dispute and that his uncle the deceased thought he is the one who made his younger uncle David sell land.

There was motive on the part of accused which he had voiced severally to kill the deceased. This court finds him guilty and he is convicted under S.215 C.P.C

HON. A.ONG'INJO

JUDGE

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

In the presence:

C/A: Penina

Accused: Present in person

State : Mrs Mwathi for State

Mr Abubakar Advocate for accused.

HON. A.ONG'INJO

JUDGE