



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NANYUKI**

**CRIMINAL CASE NO. 34 OF 2016**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**PAUL MURIUKI M'TWARUCHIU.....ACCUSED**

**JUDGMENT**

1. **PAUL MURIUKI M'TWARUCHIU**, The accused, is charged with the murder of **Douglas Mugambi Kirimi (deceased)**. The offence, as stated in the information occurred on 29<sup>th</sup> December 2014 at Nturukuma village in Laikipia country.

2. The accused was charged with this offence alongside his co-accused Douglas Mugambi Kirimi. His co-accused however was acquitted of the offence at the close of prosecution's case when the court found the co-accused had no case to answer.

3. The relevant evidence, of the prosecution, was adduced by the deceased's father, Maganju Murungi, and deceased's mother, Teresia Wambui Githinji.

4. They stated that on the evening of 28<sup>th</sup> December 2014, while the mother and father were sleeping, at about 11 p.m. they heard people outside their home calling out the father. The father woke up and realised he was being called by the accused. The accused was his relative and lived nearby. When the father went out of the house he saw the accused with two other people and also the deceased. The accused informed the father they wanted to speak to the deceased. When the father asked whether there was a problem accused responded by saying there was no problem. The father asked deceased whether there was a problem and he responded by saying there was no problem. The father in his evidence said because of the presence of the accused, a family member, he did not suspect anything could go wrong. It was then the father granted them permission to go with the deceased. The father followed them as they went and he noted there were other many young men who were with those that went with deceased. He did recognise some of those young men but those were never apprehended.

5. At 4 a.m. on 29<sup>th</sup> December 2014 the father heard a voice of someone calling. That voice was requesting him to open the door. When the father opened the door he saw it was someone he knew by the name of Muriithi. He was accompanied by a large group of young men. He was informed by those young men that deceased was not well. The father called out to the deceased but unlike him the deceased did not respond. He also noted that the deceased was barely breathing. He noted that there was a lot of blood on the deceased's clothes.

6. The mother of the deceased came out of the house and on seeing deceased she screamed which caused the neighbours to come to their homestead. The father telephoned the accused to ask him what they had done to the accused. The accused came to their homestead and failed to answer when asked what had happened to the deceased.

7. With the assistance of a neighbour's car the parents of deceased and the accused took the deceased to hospital and the doctor pronounced the deceased dead on arrival.

8. The doctor who conducted the post-mortem found that the deceased had a collection of clotted blood on the left eye which also had grazes. The doctor also noted, from the deceased's eyes, that he had lost a lot of blood. The body had friction burns on both buttocks with many cuts on the thighs. There swelling on the back. Deceased suffered intracranial bleeding and hematoma on the spine. The doctor found the cause of death was severe blood loss secondary to blunt trauma to the head and vertebral column.

**ANALYSIS AND FINDINGS**

9. Prosecution proved the first two ingredients of murder charge, that is that deceased died and the cause of death.

10. Prosecution did not however prove that death was caused by the unlawful act of the accused.

11. It will be recalled that on 28<sup>th</sup> December 2014 the accused went to deceased father to ask permission to talk to accused. The accused in his defence stated that on that night he heard people speaking outside his house. When he went out to inquire these people said they wanted to talk to deceased. That he decided to go to deceased's father to inquire why the people wanted to talk to the deceased. According to accused the father of the deceased responded by saying:-

**“That is good. I knew there was nowhere he (Samuel) could go.”**

12. Accused in his defence said that the young people had taken the deceased with connivance of the father because the deceased was “doing wrong”. The accused denied assaulting the deceased.

13. The defence of accused holds some credence because even according to the father the accused was outside his house when the deceased was taken by the youth but when deceased was returned home by the young men, critically injured, accused was not there.

14. The evidence of the investigating officer is to the effect that the Meru Community have a tradition of disciplining a young person who are wayward. That such discipline is carried out by fellow young people. The deceased was 15 years when he died. The accused is a middle aged man. No explanation was given by prosecution, if indeed there is such discipline in the Meru tradition that a middle aged man, such as the accused would be involved.

15. In my consideration of the prosecution's case, prosecution failed to meet the criminal standard of proof. The prosecution did not prove that the accused was present or participated in the injuries caused to the deceased. Even when deceased was brought to his father's home severely injured the accused was not amongst those who took deceased home. Accused had to be telephoned by the father where upon the accused went to the father's home and participated in taking deceased to hospital, but the deceased eventually succumbed to his injuries. There is no evidence that accused through any act caused the death of deceased.

16. Accordingly I hereby acquit **Paul Muriuki M'Twaruchiu** of the charge of **murder**. I order he be set free unless he is otherwise lawfully held.

**DATED AND DELIVERED AT NANYUKI THIS 2<sup>ND</sup> DAY OF NOVEMBER 2018.**

**MARY KASANGO**

**JUDGE**

**CORAM:**

Before Justice Mary Kasango

Court Assistant – Mariastella

Accused: .....

For Accused .....

For the State: .....

**COURT**

Judgment delivered in open court.

**MARY KASANGO**

**JUDGE**