



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CRIMINAL CASE NO. 21 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

ALEXANDER WANYANGA WERE.....ACCUSED

J U D G M E N T

1. The accused was charged with the offence of **Murder contrary to Section 203 as read with Section 204 of the Penal Code**. The particulars of the charge were that **on the 14th day of May 2015 at Kolongolo Trading Centre in Kapomboi location within Trans Nzoia County murdered Wilfred Amina Were**. The accused denied the charge. The prosecution called a total of 5 witnesses to prove the charge. Their evidence can be summarised as hereunder.

2. **PW1 Collins Wanyimbi Chemiati** testified that he owns a bar at Kolongolo trading centre. That at around 3.00 pm on 14/6/2015 the accused was drinking alcohol when the deceased arrived. Apart from drinking, he was trimming his nails using a nail cutter. Suddenly a quarrel ensued between the deceased and the accused and they began struggling. They struggled all the way from inside the bar till outside. In the process the accused stabbed the deceased using the nail cutters knife.

3. He called the accused brother who came and helped him and was placed on a Probox vehicle and taken to hospital. He later heard that the deceased had passed on.

4. When cross-examined he said that he knew the deceased and the accused to be brothers. He said that they spoke in Luo language which he did not understand.

5. **PW2 Benjamin Anyango Were** is the brother to both the deceased and the accused. He had been told by the deceased that he had fought with the accused after a previous quarrel.

6. He was called by PW1 and informed of the fight and the injuries sustained by the deceased. He rushed to the scene and found the deceased put inside a Probox vehicle. He was brought to Kitale District hospital but died while undergoing treatment.

7. **PW3 Isaac Simiyu Barasa** on 14/6/2015 at 3.00 pm was at Kolongolo trading centre when he received the information regarding the incident. He found the deceased lying outside the bar. The bar owner got a vehicle and was put inside. He said that he saw the accused on the way heading towards his mother's home. He saw the injury on the deceased stomach. He was still in the hospital by the time the deceased died at the theatre.

8. **PW4 Dr. Alex Wanyonyi Barasa** from Mt. Elgon hospital produced the postmortem report on behalf of Dr. Odhiambo who opined that the cause of death was severe bleeding from the abdomen.

9. **PW5 Inspector John Wesonga** from Endebess police station carried out the investigations, recorded statements from the witnesses and preferred charges against the accused.

10. When put on his defence the accused gave unsworn evidence denying the charge. He said that he was a teacher and on 17/6/15 he had breakfast together with his brother and left for his house. At 12.00 pm he left for his work station on foot and arrived at 3.30 pm. He prepared for his work for Monday.

Analysis and Determination

11. The court has perused the entire evidence in detail including the submissions by both the accused and the State counsel's. The fact of the deceased death is not disputed. The injuries he sustained were consistent with the Stab wound as per the postmortem report.

12. The question is whether it was the accused who caused the same. The star witness was PW1 who was selling alcohol in his bar to the accused. According to him the accused and his brother were people well known to him. At that moment they were the 2 of them when the deceased found them.

13. Having evaluated pw1 evidence including cross-examination, I find his evidence credible. The same is credible and consistent for the reasons that the incident took place at 3.00 pm or thereabouts. The sharp instrument used to stab the deceased was one and the same used by the accused to trim his nails. There was no evidence at least from the accused to suggest that he was not at the scene.

14. PW2 the brother to the accused as well as the deceased spoke of a family feud concerning land which had been simmering between the two. Infact they had earlier on fought.

15. For the foregoing reasons and taking cue from the evidence on record, I am convinced that it was the accused who injured the deceased. PW3 came to the scene and found the deceased injured and took him to hospital with assistance from others. The deceased was not injured anywhere else.

16. I find that there was a malice aforethought on the part of the accused. He simply extended his feud with the deceased. Although PW1 did not understand the Luo language used by the deceased and the accused, there is nothing from his evidence to suggest that the accused was provoked. Further, there was nothing to suggest that the deceased was drunk. Neither was there any evidence that the accused was equally drunk.

17. His unsworn evidence did not elicit much. The same did not address the allegations made against him.

18 For the above reasons I find that the evidence tendered by the 5 prosecution witnesses proved that the accused injured the deceased which injuries caused his death. Even if they had their domestic dispute regarding land or any other issue, the force he used was excessive in the circumstances. There was no evidence that the deceased sustained the injuries elsewhere.

19 In the premises I do convict the accused under the provisions of Section 203 of the Penal code.

Delivered, signed and dated at Kitale this 1st day of November, 2018.

H.K. CHEMITEI

JUDGE

1/11/2018

In the presence of:

Abari for the Accused

Kakoi for the State

Court Assistant – Kirong

Court – Judgment read in open court.