



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CRIMINAL CASE NO. 25 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

PETER SIKANGA WAFULA.....ACCUSED

JUDGEMENT

1. The accused herein Peter Sikanga Wafula has been charged with the offence of murder contrary to section 203 as read with 204 of the Penal Code.

The particulars of the offence are that on the 17th of October 2011 at about 11p.m at Kimingichi village in Maeni location of Kimilili within Bungoma County, he murdered Kennedy Bisuche Simiyu.

2. At the hearing the Prosecution called a total 7 witnesses. The accused was placed on his defence where he gave a sworn statement. He did not call any witnesses.

3. The Prosecution case in brief is that the accused and the deceased on the 17th of October, 2011 drunk changaa at the house of PW1 Rita Nafula Barasa. The 2 were good friends. At about 11p.m. the deceased who was drunk vomited and the accused asked him to clean the vomit so that they could leave. The deceased refused, when the accused beat him and at the request of PW1 the accused and PW2 dragged the deceased a few meters from the house to where he was found the next day.

Other witnesses PW5 and 6 did not witness the incident but went to the scene the next morning PW3 was a doctor PW4 the investigating Officer.

4. This being a murder charge three necessary ingredients ought to be proved. Firstly that a person was killed. Second that there is evidence linking the accused to the death. Thirdly that the action leading to the death was laced with malice aforethought.

5. As always in Criminal matters the onus of proving the case against the accused squarely falls upon the Prosecution to do so beyond all reasonable doubt.

6. PW1 Rita Nafula Barasa the woman in whose house the deceased and accused drunk changaa the night before the deceased was discovered dead stated that at about 8p.m while in the bed room she heard the two quarrel, with the accused beating the deceased asking to take the deceased home. She went to the sitting room and asked the accused and PW2 to take him out. PW2 gave an account of what transpired. He testified that the accused bought changaa worth Kshs.110/- which the deceased drunk twice and at a go, after which the deceased began to vomit. The accused then held the deceased by the neck demanding that he wipes the vomit which the deceased refused. The accused slapped the deceased, and put the

deceased head under his feet. PW1 then asked PW2 and the accused to take the deceased out. Accused also pulled down the deceased from the sit. That on taking the deceased out, the accused took the deceased to the shamba, picked his bicycle and left. PW2 in the morning at about 6a.m. learnt that the deceased was lying on the road with a jacket wrapped around his head. Later he learnt of death.

PW3 was Dr. Patrick Wambani Mutoro of Mt. Elgon sub-county hospital and Superintendent of Kapsokwony County hospital. He produced the post mortem report of the deceased Kennedy Simiyu and testified that on examination he found haemorrhage on the left side anterior abdominal wall and left hip joint. He gave details as follows;

- *Bleeding from urethra and*
- *The Right ear.*
- *Bruised left media lower leg and*
- *Bruised lacerated spleen.*

Opinion formed was that the deceased died of cardio respiratory failure due to bleeding from the ruptured spleen which may have been caused by blunt trauma.

PW4 Police Chief Inspector David Tanui received news of the deceased death. On arriving with another at the scene they found the deceased lying 30 meters away from PW1's house. He learnt from PW1 that the accused and the deceased quarreled the previous night and the deceased was hit by the accused.

7. Having been placed on his defence the accused Peter Sikanga gave a sworn statement. He recall the fateful night of 17th October, 2011 which he found the deceased at PW1's place and bought him a drink. He corroborates the evidence of PW2 that the deceased drunk the two glasses of Kshs.40/- and 70/- he bought from him at once and after the second shot, the deceased vomited. His statement varies from that of PW1 and 2 to the extent that the deceased fell down after vomiting and he took him out and thereafter left as the deceased refused to leave. He denied having beaten the deceased.

8. There is no doubt from the evidence stated above that Kennedy Simiyu died on or about the 17th of October 2011. The morning of the 18th of October 2011 **PW1, PW2 and PW4** witnessed him dead which **PW3** confirmed in the post mortem examination done on 19th October 2011.

9. **PW1, PW2 and PW4** testify to the fact that the deceased and the accused had a quarrel after drinking as the deceased vomited at the place. The two who were friends were drinking. The accused was the one buying the drink and when his friend vomited he asked him to clean up the mess but the deceased declined. A quarrel ensued between the two leading to the accused beating up the deceased.

10. **PW2** a young boy of 17 years at the time of giving evidence and 14 at the time of the incident, struck me as a truthful witness. He stated that the accused beat up the deceased and pulled him from the chair.

11. The post mortem report revealed that the deceased had received injuries to his ear, abdomen and the spleen. It is evident that the accused seriously beat up the deceased who sustained injuries leading to his death.

12. Although the accused denied the beating he did not dispute the evidence of PW1 and 2 on this score and I therefore find as a matter of fact that as the deceased refused to clean up the vomit the accused in beating him injured him seriously which injuries led to the death of the deceased. This satisfying the second necessary ingredient of the offence of murder.

13. The accused and the deceased were friends. This was alluded to by PW1, PW2 and the accused. On the fateful day the accused on arriving at PW1's found the deceased who asked him to buy him a drink and the accused dutifully did so. Just for his friend to 'misbehave' and vomit, which irked the accused who demanded that his friend cleans up the mess. When the deceased refused he beat him up.

Both were drinking at the time and it is my view that there is no evidence that the accused had any intentions of killing his friend. He was annoyed and went overboard in disciplining his friend to an extent that he fatally injured him.

14. For the reasons above although 1st and 2nd ingredients have been proved the evidence before Court falls short of proving the offence of murder. However in my view the Prosecution has proved that the accused inflicted injuries upon the deceased which led to his death. I therefore find the accused guilty of the lesser offence of manslaughter. He is accordingly convicted.

DATED and DELIVERED at BUNGOMA this 16TH day of MARCH, 2017

ALI-ARONI

JUDGE