



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUNGOMA**  
**CRIMINAL CASE NO. 10 OF 2013**

REPUBLIC.....PROSECUTOR

V E R S U S

WYCLIFFE W. WAMELA.....1<sup>ST</sup> ACCUSED

ELIUD WANGILA WAMELA.....2<sup>ND</sup> ACCUSED

**JUDGEMENT**

1. The accused persons in this matter Wycliffe Wamalwa Wamela and Eliud Wangila Wamela are faced with the offence of murder contrary to section 203 as read with 204 of the Penal Code.
  2. The particulars of the offence are that on the 5<sup>th</sup> of March 2012, the two murdered Reuben Wanjala at Musemwa village within Bungoma County.
  3. The accused having pleaded not guilty to the offence the matter went to full trial. The Prosecution called a total of 9 witnesses. At the close of the Prosecution case the Court placed the accused persons on their defence.
  4. The Prosecution case in brief is that the two accused persons in the company of others not before Court assaulted the deceased on the 5<sup>th</sup> of March 2013 at about 3p.m. attracting a crowd who rescued the deceased. Later on the same day the accused in the company of one other went to the deceased home and beat him further inflicting fatal injuries. The deceased succumbed to the injuries later in the evening as he was undergoing treatment. That the accused persons went into hiding. PW1 Joseph Wafula Simiyu, PW2 Calistus Juma Wamela, PW3 Mary Muthoni Wekesa, PW4 Tobia Wanjala Wekesa, PW5 Benson Barasa Toi and PW9 Martin Nyongesa were all eye witnesses to the accused persons assaulting the deceased. All the witnesses save PW4 saw the 1<sup>st</sup> incident when the accused and their accomplices mercilessly assaulted the deceased. They were all neighbours and members of the same clan. The witnesses testified that the assault was due to allegations that the deceased seduced peoples' wives.
  5. PW4 a son of the deceased testified that he saw the 2 accused persons and one other not before the Court assault his father at their home having stripped him naked, in the evening of the 8<sup>th</sup> of March 2012.
- PW5 Benson Barasa Tai belonged to the same clan as the deceased and the accused. He received a call at about 3p.m. on the 5<sup>th</sup> of March, 2012 about the assault and he rushed to the scene and found the 2 accused person together with others beating the deceased.

He stopped the beating and learnt that they beat up the deceased for allegedly seducing peoples' wives. He took the deceased to Kapchai police station and to hospital. He did not think that the beating he witnessed could have lead to the death of the deceased. He rescued the deceased while in the company of PW1 and PW2.

6. PW4 Tobia Wanjala Wekesa 17 year old son of the deceased saw PW5 bring his father home while he was in his house. He had learnt from his mother that his father had been beaten and she wanted to look for money to take him to hospital. As he was in his house reading he heard a knock at his parent's house. After ½ an hour a child called him, he went out and found 1 man outside and two people he knew inside. The person outside was Fred Kabiri while those inside the house were the 2 accused persons. He saw them beating his father as he stood at the door of his father's house. He closed the door and called a neighbour, the accused persons threatened him, and the 2<sup>nd</sup> slapped him. When the neighbour came the assailants ran away. His mother came back took his father to hospital.

7. PW6 Jenniffer Wanjala Kuyuni the wife of the deceased corroborates the evidence of PW3, 4 and 5. She received a call from PW3 that her husband was being assaulted by people who included the accused persons. PW5 brought her husband home and asked her to take him back to hospital at 8p.m. as he had not received treatment for lack of money. She went to look for money on return she found that her husband had been beaten once more. She called a cousin to assist take the deceased to hospital. They rushed him to Kapchai health centre and were advised to take him to a bigger hospital for scanning as he appeared to be bleeding internally. As they organized to transfer the deceased to another facility he succumbed to death.

8. PW8 Dr. Haron Ombongi of Bungoma County hospital produced a Post mortem report prepared by his colleague Dr. Opondo whose findings were as follows:-

External Examination

Bruises on the right knee

Internally – ruptured spleen with massive bleeding

Cause of death was given as ruptured spleen due to trauma.

9. The accused persons gave sworn statements. They admitted witnessing the assault imposed on the deceased. However they denied having assaulted the deceased.

Second accused admitted having gone to the Sister's house with the 1<sup>st</sup> accused on learning that he had been named as one of the assailants for fear of being assaulted.

10. In order for the Prosecution to prove the offence of murder three ingredients must be proved. Firstly that the deceased was killed, secondly that there is evidence linking the death to the accused persons and thirdly that the killing was done with malice aforethought.

11. The evidence of PW8 is that he carried out a post mortem on the dead body of the deceased who died of a ruptured spleen due to trauma.

12. In my view this is one case where eye witnesses, members of the same clan and family came out and testified to having first hand witnessed the assault meted out to the deceased by the accused persons and others. The village Elder PW5 corroborated the evidence of other eye witnesses, he arrived at the scene and rescued the deceased.

13. PW4 the son to the deceased witnessed the second beating of his father at their home. PW3 saw the accused person in the company of a third person heading towards the deceased home later in the evening, same time they are said to have stripped the deceased naked and beat him further.

PW6 corroborated the injuries sustained the second time, she had left and on return found the deceased more critical.

14. The names of the two accused persons were given by all the eye witnesses. I find the evidence of the witnesses credible, consistent and truthful and not shaken or displaced by the evidence of the accused persons which was mere denial and I therefore form the opinion that the prosecution proved beyond all reasonable doubt that the accused persons were part of the crowd that assaulted the deceased.

15. The assailants assaulted the deceased and injured him. As if this was not enough the accused persons followed him to his house, stripped the deceased naked, and threatened PW4 who went to the rescue of the deceased and assaulted him further. The actions of the accused and their accomplices were laced with malice and were pre meditated. All the 3 necessary ingredients of the offence of murder were established.

16. For the reasons above stated I find and hold that the Prosecution proved its case against the accused. I hereby accordingly convict them of the offence of murder as charged.

**DATED at BUNGOMA this 2<sup>ND</sup> day of MARCH, 2017**

**ALI-ARONI**

**JUDGE**