



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 61 OF 2010

REPUBLIC.....PROSECUTOR

VERSUS

WILSON SILONI MANINI.....ACCUSED

J U D G M E N T

1. **Wilson Siloni Manini**, hereinafter “the Accused” is charged with the offence of **Murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**. Particulars of the offence being that: on the **12th** day of **October, 2010** at **Marori Reserve Loitoktok District**, within **Rift Valley Province**, jointly with others not before court murdered **Samuel Githuku** (deceased).

2. Facts of the case are that on the **12th October, 2010**, the deceased and PW1 **Michael Kinyanjui Njoroge** who were drunk were beaten by their neighbours **Muturi** and **Njenga** following allegations that they were fond of stealing chicken in the neighbourhood. Other neighbours intervened in an endeavour to rescue them. They beseeched them to take the two (2) suspects to the police station. **Muturi** caused the two (2) to be tied with ropes onto a motorcycle. He dragged them along the way. He stopped the motorcycle and plucked some sticks that he used to discipline them further.

3. At that point in time the Accused arrived at the scene with his motorcycle. He enquired why **Muturi** was assaulting them. On being told that they had stolen chicken he observed that they were drunk. He took a stick and hit each one of them once then advised **Muturi** to take them back home so that they could sober up. On that note **Muturi** carried both the deceased and PW1 on his motorcycle and took them back to his house. He tied them up on a post using a rope. He took a rope and continued beating them. He ordered them to confess but they could no longer talk. He cut the rope and both of them fell down. He poured water on them. Only PW1 responded. As **Muturi** concentrated on ascertaining the status of the deceased PW1 crawled out and went home.

4. Subsequently the deceased’s body was found on a farm owned by **Mbaruk Marao**. The police were informed and they collected the body. A postmortem was conducted on the body by PW7 **Dr. Issa Muhammed** who formed an opinion that the injury the deceased sustained on the trachea and the left lung contusion were the main cause of death although he could not rule out concussion. (Acute traumatic diffuse Axonal injury). The matter was investigated which culminated into the arrest of the Accused.

5. When put on his defence the Accused stated that while on his way home he saw a motor-cycle that was stationary. He stopped and found **Muturi** with **Kinyanjui** and the deceased who had been tied on the motorcycle. All of them were his neighbours. On enquiring what had happened, **Muturi** Accused them

of stealing his chicken. He stated that he was taking them to the chief. He noticed that the people were drunk therefore advised him to return home and sort out the issue since the deceased was his uncle. He turned his bicycle and went back home with the two (2) individuals. He denied having assaulted the two.

6. Submissions filed have been taken into consideration.

7. Issues to be determined are:

- Whether death occurred.
- Whether the Accused person caused the death of the deceased.
- Whether the Accused person had malice aforethought.

8. The fact of death was proved by evidence adduced by the Doctor who performed the postmortem. A report thereof was produced in evidence that confirmed the death of the deceased.

9. According to the postmortem report, the deceased sustained injuries on the right palm which was swollen; several bruises including the right frontal area, (forehead) linear – transverse bruise on the anterior neck and 3 bruises on the left shoulder measuring about 5 cm each. The trachea/rings below the thyroid cartilage was broken and the left lung had collapsed. The frontal bone had a fracture. The cause of death being the tracheal injury and left lung trachea.

10. The culprit who beat the deceased thoroughly prior to encountering the Accused was **Muturi**. Neighbours prevailed upon him to take him with PW1 to the police station. He tied them on a motorcycle and dragged them along. PW9 **Corporal Paul Mwambere** confirmed that at the point of being recovered the body had marks of having been dragged. Prior to encountering the Accused the deceased had been assaulted. The only witness who stated that the Accused also picked some sticks and hit them prior to advising **Muturi** to take them back home was PW1. On cross examination he stated that he could not tell if indeed the Accused actually hit them since he was drunk and already injured.

11. With this kind of evidence the Accused must be believed when he denies having assaulted the deceased.

12. According to PW1 it was after they were taken home that their necks were tied onto a pole using a rope. They were assaulted further. The broken trachea/rings below the thyroid cartilage would have resulted from the injury sustained after being tied onto the pole. The deceased's neck was tied onto the pole and assaulted further. In the premises **Muturi** as opposed to the Accused must have caused the death of the deceased.

13. Evidence having fallen short of proving beyond any reasonable doubt that the Accused caused the death of the deceased, the case against him is not proved to the required standard. Consequently he is acquitted of the offence of murder. He shall be set free unless otherwise lawfully held.

It is so ordered.

Dated, Signed and Delivered at Kitui this 9th day of February, 2016.

L. N. MUTENDE

JUDGE