



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL CASE NO. 43 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

KENNEDY MANZI MUEMA.....ACCUSED

J U D G M E N T

1. **Kennedy Manzi Mwema**, “the Accused” is charged with the offence of **Murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code (Cap. 63), Laws of Kenya**. Particulars of the offence are that on the **night of 20th and 21st day of September, 2013** at unknown time at **Mikuyu Sub-location** in **Kwa Vonza Location** within **Kitui County**, jointly with others not before court murdered **James Kakuti Mbuvi** (Deceased).

2. Facts of the case are that the Accused was related to the Deceased by virtue of being his grandson. He was the Deceased’s favourite grandson that he lived with. The relationship between the Deceased and his son, PW1, **Michael Mwema Kakuti**, the father of the Accused was not cordial.

3. On the **21st September, 2013**, PW1 on realizing that the Deceased’s herd of animals had not been taken to graze went to check on him. He found the door to his house locked from outside. He peeped through the window and saw keys on the table. He removed the window pane and took keys that he used to open the door. Inside the house was the Deceased’s body hanging with a rope around his neck. The matter was reported to the police who caused the body to be taken to the mortuary. Investigations carried out culminated into the arrest of the Accused.

4. When put on his defence, the Accused denied having committed the offence. He stated that his grandfather took him to reside at his homestead prior to the demise of his grandmother in the year 2010. He resided within the homestead but in a separate house. After the demise of his grandmother the Deceased disposed off part of the land as he needed funds for sustenance. He had subdivided the land and given PW1 his portion. PW1 having not been consulted blamed him for assisting the Deceased. He denied having stolen any money from the Deceased.

5. Further, he stated that he collected a title deed in respect of the Deceased’s land from the Land Registry. Thereafter the Deceased requested him to keep it due to his failing memory. He instructed him to give it to **Jonathan Munyao Mbuvi** in case he died. He travelled to **Kavisuni** to visit his sister. While there he learnt of the Deceased’s death. He went back home and participated in funeral arrangement. PW1 asked for the title deed but he declined to release it to him. He later gave it to PW2. After the burial he was arrested and subsequently charged. This gave PW1 the opportunity to dispose of the Deceased’s parcel of land.

6. At the close of the defence's case submissions were filed by the defence counsel that I have taken into consideration.

7. Issues for determination are:

- Whether death occurred.
- Whether the death was a consequence of an unlawful act or omission.
- Whether the death was caused by the Accused person.

8. The fact of death in the instant case is not in dispute. PW6 **Dr. Patrick Patrick Mutuku** conducted an autopsy on the mortal remains of the Deceased. He opined that the cause of death was cardio-pulmonary collapse due to Asphyxia secondary to hanging.

9. The body of the Deceased was found hanging from the roof of the house. Looking at the external appearance of the body, it had several physical injuries. There was a bruise on the left side of the forehead. The right forearm had bruises. The shins of both legs had bruises. On cross examination the Doctor was of the opinion that the injuries could have been caused before the hanging. This brought in an aspect of the same having been caused by an unlawful act or omission.

10. Evidence adduced by the Prosecution was however circumstantial. There was no direct evidence as to who did the act that resulted into the death of the Deceased.

11. Principles to be applied in testing circumstantial evidence were set out in the case of **Abanga alias Onyango vs. Republic Criminal Case No. 32 of 1990** where the court stated thus:

“It is settled law that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests;

i. The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

ii. Those circumstances should be of a definite tendency, unerringly pointing towards guilt of the accused;

iii. The circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.”

12. According to evidence adduced by PW8, **No. 81500 Corporal Robert Okoth** who received the initial report and investigated the case, the Accused person was one of the suspects according to PW1, the reportee, because together with his sister-in-law they were suspected to have stolen money from the Deceased's Mpesa Account and when the report was made to the police the Accused ran away from home for fear of being arrested. The officer established that the Accused was not at home at the time of the Deceased's death. This evidence perse would suggest that the Accused could not have done an act that would result into the death of the Deceased. The circumstances that prevailed could therefore not point at the Accused as the person who committed the unlawful act.

13. However, despite having established that the Accused was not present he went on to charge him because he was found in possession of a title deed that had gone missing. In his defence the Accused explained circumstances in which he possessed the title deed. The relationship between PW1, his father and that of the Deceased was not cordial. As a result he took the Accused as his confidant who knew all his secrets. The Deceased entrusted him with a title deed and ordered him to hand over to PW2 in event of death having befallen him. PW2 **Jonathan Munyao Mbuvi** confirmed this particular fact. He had the title deed that was eventually handed over to him.

14. Evidence against the Accused therefore remains mere suspicion. In the case of **Sawe vs. Republic**

(2003) eKLR it was stated thus:

“Suspicion however strong, cannot provide a basis for inferring guilt which must be proved by evidence.”

15. Suspicion that the Accused person had stolen money from the Deceased, an allegation that was not investigated and established cannot be a basis to prove the fact that the Accused caused the death of the Deceased.

16. In the circumstances, the Prosecution has failed to prove the case against the Accused beyond any reasonable doubt. In the result he benefits from the doubt established and is acquitted of the offence of murder as charged.

17. It is so ordered.

Dated, Signed and Delivered at Kitui this 11th day of May, 2016.

L. N. MUTENDE

JUDGE