



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**HCR 20 OF 2011**

**REPUBLIC..... PROSECUTOR**

**VERSUS**

**SAMWEL MURORI MANYARA .....ACCUSED**

**JUDGMENT**

**Samuel Murori Manyara** (the accused) is charged with the offence of murder contrary to **Section 203 as read with Section 204 of the Penal Code**. Accused is alleged to have murdered his father, **Dickson Manyara Mboroki** on 21/3/2011 at Mariara Bridge, Mariara Village, Kirigera Location of Meru.

The prosecution called a total of 8 witnesses while the accused testified on oath and did not call any other witness. The prosecution was led by Learned Counsel Mr. Mungai and Mr. Mulochi while the accused was represented by Ms. Nelima Advocate.

**PW1 Hellen Mukiri** testified that she left her house on a motor bicycle and on reaching Mariara River, she found Muroki and Dickson wrestling. She asked the motor cyclist to stop because she knew the two people who were wrestling. She screamed and beckoned to people to come near and as they approached, Muroki ran off and she noted that Dickson was bleeding from the head. She was getting late and left the scene to continue to her way. She later learnt that Dickson was taken to Hospital and died. PW1 said that accused had a walking stick with which he was assaulting the father as the father tried to protect himself. She observed the incident from about 20-30 metres away.

**PW2 Grace Mwendwa** recalled that on 21/3/2011 about 2.30 p.m., she was going to Kariene Market when she heard PW1 screaming and went to see what was happening. She then noticed accused beating Dickson with a walking stick. She called Edith Kanyuru, to come to take Dickson to Hospital. She knew accused and deceased as neighbours.

**PW3 Martin Mwenda** told the court that on 21/3/2011, he was walking home and while at Mariara, found accused being beaten and upon enquiring why, he was informed that accused had beaten his father. He went and saw where the deceased was lying near the river and noticed that he was bleeding from the head, forehead and face. Dickson could not talk and with the help of other people, they took him to Meru General Hospital but he died upon arrival.

**PW4, Gerald Mwirigi Marete**, Chief of Kirigara Location in Abothoguchi recalled that accused had complained that he had a problem with his family over land; that accused's family members went to the office at 11.00 a.m. but accused did not arrive by 1.00 p.m. when he called for accused's wife but she was not able to answer the questions he asked. He decided to postpone the meeting till next day and wrote a letter to accused to attend. When going for lunch, one Lilian Ngugi informed him that accused was beating the father at Mariara. He rushed to the scene using a *matatu* but found Murori had already been

arrested by members of public and the father was lying near the river with the legs in the water, unconscious and was bleeding from the head; that the accused was being beaten by the public and he intervened. He called police who rearrested accused while the old man was taken to Hospital. PW4 said that he saw a walking stick at the scene.

**PW5, Ezekiel Mungira Kiriinya**, the Assistant Chief of Rwonderi Sub-Location recalled being with PW4- the Chief of the Area when they were called to the scene, found Dickson lying next to the river while accused had been detained by the public. He reiterated what PW4 told the court. In cross-examination, he admitted having recorded that he saw cuts on the forehead of the deceased and that the weapon used was a sharp one.

**PW6, Stanley Kanyomoo Mboroki**, is a brother of the deceased. He identified the accused as the son of the deceased. He recalled that on 21/3/2011 he received a call that the accused was beating his brother, he ran to the scene, found the deceased was injured on the forehead which had a cut and face; that deceased's clothes were wet. He arranged for transport, took him to Meru Level 5 Hospital where he died while undergoing treatment. He found accused near the scene surrounded by the members of public. PW6 said that earlier that day, he had accompanied the deceased to the Chief's office to settle a dispute but accused failed to turn up and they agreed to return another day and he left for his home while other people present went their different directions. He was aware there was a dispute between accused and deceased.

**PW7, Paul Kimani Manyara**, the deceased's son, identified the deceased's body to the doctor before post mortem was done. He observed an injury (hole) on deceased's head.

**PW8, PC Joseph Kandie** of Kariene Police Station was sent to the scene by the OCS. The body of deceased had been removed for the hospital but found accused had been arrested by members of Public. Later, he visited the hospital where deceased had been taken and observed deep cuts on deceased's forehead. He denied recovering the weapon used in the assault though witnesses talked of have seen a walking stick. PW8 was recalled to produce the post mortem prepared by Doctor Matu of Meru Level Five Hospital. The Doctor found that the deceased died as a result of severe head injury due to intracranial haemorrhage due to a sharp object.

When called upon to defend himself, the accused testified on oath; that his father loved him a lot and on 21/3/2011 he woke up, found his father basking in the sun outside his door, he brought out 5 litres of alcohol in a jerrican and they started to drink. The deceased told him to get Kithinji who harvests honey to go harvest his honey and accused left for the DO's office. He did not get the DO and on his way back home, he went to take *mugacha* (alcohol) at Kariene market. Later on his way home, he reached Mariara stage where he found his father lying on his back and was bleeding from the head and beside him was a walking stick. He tried to lift him up but failed and it is then PW1 arrived and they had a dispute over chicken; that she started to allege that accused had beaten the deceased; people came, beat him up till the Chief came and later Police arrived and arrested him. He denied having disagreed or killing deceased. He further stated that PW1's chicken ate his kale which he had sprayed with insecticide and the chicken died. He said they only had a dispute over a title deed but not land and that he had no dispute with the Chief or any other witness except PW1.

Upon closure of the defence case, Ms. Nelima submitted that there are three ingredients required to prove an offence of murder. She urged that though there is no dispute that the deceased was murdered, the cause of death was in dispute; that the two eye witnesses gave contradictory evidence in that PW1 saw a fight between two people while PW2 saw accused assault deceased; that the Investigations Officer observed that the deceased sustained deep cut wounds on the head which was supported by the findings of the Doctor which does not corroborate PW1 and 2's evidence. Counsel then relied on the decision in **Mutua Mutisya v Rep CRA 13/06** where the accused allegedly used a stick to assault the deceased but the post mortem revealed that the injuries were more and in light of the contradictions, acquitted accused. Counsel also argued that whereas the Chief, PW4 said that he had found a blood stained stick near deceased's body, the Investigations Officer denied having recovered one. Counsel also relied on the case of **Urita Njeri v Rep 37/2009** where the court found the evidence to be contradictory and investigations

shoddy. She urged that the Investigations Officer should have carried out more investigations on seeing the injuries found on the deceased.

In reply, Mr. Mulochi argued that the prosecution has proved its case to the required standard in that accused was seen assaulting his father at 2.30 p.m.; that there are no material contradictions between the evidence of PW1 and 2's evidence; that there existed a dispute between accused and deceased over land and the Chief was supposed to mediate between them on the fateful day. Counsel argued that the defence was a mere denial.

From the evidence on record, there is no doubt the incident leading to deceased's death occurred in broad day light. PW1 and 2 testified to having witnessed the incident about 2.30 p.m. PW3 found accused being beaten about 2.30 p.m. PW4 and 5, the Chief and Assistant Chief of the area told the court that he had parted with the deceased at about 1.30 p.m. after the meeting he had called failed to take place due to accused's absence. PW6, deceased's brother also confirmed having been at Chief's office and parted with deceased about 1.00 p.m. only to be called later. No doubt, the offence was committed in broad daylight.

PW1 and 2 are the only eye witnesses. PW1 arrived at the scene before PW2. PW1 stated that she saw two people wrestling. Then she called it a fight and then clarified the accused was trying to hit the deceased and the deceased was trying to protect himself. She still called that a fight. PW1 saw accused using what looked like a walking stick to hit deceased. PW2 said that she found **"Murori beating Diskson with a walking stick"**. From this evidence, it is clear that it is accused who was assaulting the father. It is worth noting that the deceased was aged 80 years old at the time. He was an old man as opposed to the accused.

Both PW1 and 2 saw the accused assaulting the deceased with a walking stick. PW1 specifically said it was something that looked like a walking stick. It is clear from the evidence that they found the deceased already being assaulted. According to PW1, the deceased was bleeding from the head. She did not go near the deceased to observe exactly what injuries he had sustained. PW1 and 2 said PW1 stood about 20-30 metres away.

Although PW4 who went to the scene soon after the incident told the court that he saw a blood stained walking stick near the deceased's body, he had no idea what happened to it, whether the Police took it or not. PW4 went to the scene with PW5 but PW5 denied seeing any weapon at the scene. The Investigations Officer (PW8) admitted that the report made to the Police Station and the evidence of PW1 and 2 is that the weapon that accused used was a walking stick. The said walking stick was never recovered. It seems PW5 and 8 never saw the stick alluded to by PW1 and the stick was never recovered at the scene. But, of importance to note is that members of public arrived at the scene before PW3, 4 and the police. PW3 and 4 found members of public had already arrested accused and were assaulting him. It is important to also note that PW1 and 2 arrived at the scene when the accused was already assaulting the deceased. It cannot therefore be ruled out that apart from the walking stick, accused had used another weapon which was not recovered.

Both PW1 and 2 did not approach the place where accused assaulted deceased. PW1 estimated that she stood about 20-30 metres away. PW2 also said she stood on the tarmac a bit far off from deceased but she could see exactly what was happening. PW2 confirmed that PW1 was nearer to the scene – 20-30 metres away. What they saw accused use on deceased looked like a walking stick. But they did not go near enough to confirm. Both PW1 and 2 left when people came to the scene after they were attracted by PW1's screams.

From the evidence on record, the accused did not manage to escape from the scene. PW3, 4, 5, and 6 who came to the scene soon thereafter found accused being assaulted by the public not far away from deceased's body.

It means that accused never really left the scene of the crime. There is evidence that there is a river where deceased's legs were partially submerged and accused first ran off on seeing people and therefore had the

chance to dispose of any weapon that he may have had. From the foregoing, I am satisfied that it is accused who assaulted the deceased and may have been armed with both a sharp and blunt object that he used in assaulting the deceased. There is no evidence that the deceased was assaulted by any other person.

I have considered the decision relied upon by defence Counsel in **Mutua Mutisya v Rep CRA 43/2006**. In that case, the evidence was that a stick was used to assault the deceased but post mortem results were different. In this present case, nobody saw when the accused started assaulting the deceased and the deceased died at the scene and so there is no doubt that he died from injuries inflicted by accused. There is no law that requires that the weapon used in an assault must be seen or found. There are instances when the weapons are not recovered at all and the circumstances of this case are that it is accused who was seen assaulting the deceased and the deceased died soon after being removed from the scene to the Hospital.

In **Urita Njeri's case (Supra)**, it is distinguishable from the present based on the facts. The evidence against accused was purely circumstantial and the court found that other people had the opportunity to assault deceased who included the key witness and the post mortem examination did not point at strangulation as the cause of death yet that is what the key witness told the court. The facts of this case are very different.

In the **Karisa Kwisa Moni case (Supra)**, the alleged eye witnesses were children of tender age whose evidence was not corroborated and the Doctor's findings did not corroborate the evidence of the children. The facts are different from the instant case.

To prove a charge of murder, the prosecution has to establish beyond any reasonable doubt:

- (1) The death of deceased;**
- (2) That the accused caused the death through an unlawful act or omission;**
- (3) That the accused had malice aforethought.**

The death of deceased is not in doubt. PW6, deceased's brother found him injured at the scene of assault, took him to hospital where he died while undergoing treatment. PW7, the son of deceased identified the body to the Doctor before post mortem was carried out.

Having considered all the evidence on record and though PW1 and 2 only saw the accused assault the deceased with a walking stick, I have found that they were not present when it all started and there is no evidence that deceased had had a confrontation with anybody else. I am satisfied that it is the accused who inflicted the fatal injuries on the deceased.

PW3 and 4 were aware that there was a land dispute between accused and deceased. PW6 was also aware of a dispute between accused and deceased and attended the Chief's office that day. The accused had made the report to the Chief, PW3 who had called for a meeting which the deceased and PW6 attended but accused failed to attend. The deceased had parted with PW3, 4 and PW6 about 1.30 p.m. just before the deceased was attacked. Accused admitted that he had no dispute with the PW3 and 4 that would make them frame him and I am satisfied that they told the court the truth. I find that accused way laid his father knowing that he would be coming from the chief's office where they were supposed to meet to resolve the land dispute. I am also satisfied that accused had malice aforethought because of the existing dispute and the manner in which he attacked and injured his father who was about 80 years old.

As for the allegation by the accused that PW1 had a grudge against him, that allegation was an afterthought. PW1 testified before this court and at no time was such allegation put to her to answer. Besides PW1's evidence was corroborated by that of PW2.

In the end, I find that the prosecution has proved its case beyond any doubt that it is the accused who

intentionally inflicted the fatal injuries on the deceased. I find him guilty and convict him of the offence of murder as charged under **Section 322 of CPC**.

**DATED, SIGNED AND DELIVERED THIS 13TH DAY OF SEPTEMBER, 2016.**

**R.P.V. WENDOH**

**JUDGE**

**13/9/2016**

**PRESENT**

Mr. Mulochi for State

Ms. Nelima for Accused

Ibrahim/Peninah, Court Assistants

Present, Accused