



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO 47 OF 2011

REPUBLIC..... PROSECUTOR

VERSUS

GEORFREY MIRITI ACCUSED

JUDGMENT

Geoffrey Miriti (accused) is charged with the offence of murder contrary to **Section 203 as read with Section 204 of the Penal Code**. The particulars of the charge are that on 28/7/2011 at Karimba Village, Kisima Location in Buuri District, jointly with others not before the court, murdered **Kimhuri Buringo**. He denied the charge and the case proceeded to full trial with the prosecution calling a total of 7 witnesses.

Domiciano Thaimuta (PW1) testified that on 28/8/2011 about 9.00 a.m., Francis M'ibaya called him and informed him that he had found some blood stained clothes by the road side and that looked like those of Kimhuri, who was his cousin. He went to the scene which was by the roadside, saw a lot of blood which led to the bushes. They searched the bushes and found nothing. He went to find out from the bar where deceased used to drink at Kirimba and confirmed that Kimhuri had been there but left with other people. A further search in the bush did not bear any fruits. He reported to Marithati Police Post and went back to search and found the body which had injuries to the head and there was a blood stained stone near the naked body. He called Police who came to the scene and went to enquire from the bar as to who had been drinking with the deceased and those named were Miriti and Kiogora; that the Police went to question the two. PW1 identified accused as Miriti whom they went to question. PW1 did not know accused before.

PW2, James Mwiraria Kirichiu recalled the 28/8/2011, he saw many people on the road, went there and found a lot of blood, shirt, shoes and a shirt that was blood stained and the people were wondering whose they were for. He identified the shirt and shoes as belonging to his cousin Kimhuri. They saw a lot of blood leading to the bushes where they found Kimhuri's naked body; that Police were called; that the bar owner John Njogu said Kimhuri left the bar with two people that he could identify and he led them to the farm where he identified Miriti and Kiogora. He went with Police to the farm where the two lived and that Geoffrey Kiogora ran off on seeing them but both accused and Kiogora were both arrested.

PW3 Cpl. Isaiah Korir was the arresting officer in this case. He said that PW1 reported at Marithati Police Post about recovery of the cousin's clothing. He advised them to go and search but later went to inform him that deceased's body had been found and he went to the scene. He recovered a blood stained stone; shirt, trouser and shoes. From enquiries from the public, he learnt that the deceased had been seen with Kiogora and Miriti. They first found Kiogora then accused who tried to run away. He handed them over to Officer Commanding Division (OCS) Subuiga. He passed by accused's house and recovered clothes which were soaked in water and also a greenish coat which had some blood stains.

John Nyaga Njogu Gichobi (PW4), was working at Mabua Club on 27/8/2011; that customers went there to drink alcohol; that Kimhuri was one of the customers who drunk alcohol at the club and left the bar with Solanki, George, M'Ntongondou, Miriti and other people that he did not know when he was closing down at 11.00 p.m.; that next day, people went to the club asking about deceased; he went with them where blood stains were found and was with those who traced Kimburu body.

PW5, Lawrence Kinyua Muthuuri works with Government Chemist, Nairobi. He recalled having received some exhibits from Sgt. Halake Boru; a stone, a greenish shirt, a greyish trouser and greenish coat and was requested to determine the presence and source of any blood stains on the items. He found the shirt, trouser and stone to have been stained with human blood while the coat did not have any blood stains. He generated DNA profiles from the blood stains and the shirt, stone and trousers and found them to belong to an unknown person. He denied having received any blood samples from accused or deceased and could not therefore determine whose blood was on the stone, shirt and trouser.

Dr. Belinda (PW6), produced the post mortem report prepared by **Dr. Diana** who found the cause of death to be internal

haemorrhage following blunt trauma to the head, chest, abdomen with multiple fractures.

PW7, IP Charles Mwanyalo was the Investigations Officer in this case. He visited the scene, took possession of the recovered exhibits, also received clothing that the suspects had washed, recorded statements and forwarded the file to the DPP's office for advice and was asked to treat one of the suspects, Kiogora as a witness which he did; he failed to trace Kiogora when he went to bond him come to court to testify.

In his defence, accused testified on oath whereby he recalled that he had been employed at Kisima Farm; that on 27/8/2011, a Saturday, he left the farm at 6.00 p.m. and went to the bar of John Njogu in company of Martin Kiogora, Kariuki, Phineas Gitonga, Mutuma. After drinking for awhile, he asked the others to leave so that he could go to complete his work but they declined. He went back to work, finished his work and slept. He was arrested next day at 3.00 p.m. when going to Marithati. He met APs who had arrested Martin Kiogora who was carrying something in a paper bag like a stone. At Police Station, he was informed he had killed somebody. Both him and Kiogora were brought to court but OCS left with Kiogora. He denied knowing the deceased or killing him.

In his closing submissions Mr. Kaumbi, Counsel for the accused reiterated the earlier submissions, that the case is based on circumstantial evidence and none of the witnesses implicated accused; that the forensic evidence did not link accused to the offence and that accused's defence is consistent and believable.

In reply, Mr. Mulochi urged that accused left the bar with the deceased as per evidence of PW4 and that the court should consider the evidence in its totality.

No doubt, this case turns on circumstantial evidence because nobody witnessed the murder. The only evidence that the prosecution relies upon is that of PW4 who said that accused left the bar where PW4 was working together with deceased and others.

For the court to find a conviction on circumstantial evidence, the principles which must be established are well espoused in the case of **Rep v Kipkering Arap Koskei & Another 16 EACA 135**, where the court said:

“In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt.”

The same principles were echoed in **Musili Tulo v Rep CRA No. 30 of 2013** where the court held:

“(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 the 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”.

It is the duty of this court to examine the evidence on record to determine whether it meets the above criteria.

The accused does not deny that he went to drink alcohol at PW4's bar on the said evening but he claims to have left alone while the others remained drinking. PW4 on the other hand said that the accused left the bar at 11.00 p.m. when he was closing and that he was with Solanki, Kiogora, George, M'Ntongondou with others whom he did not know. It is PW4 who led to the arrest of the accused. It is clear from PW4's evidence that the accused was amongst the patrons who left the bar because PW4 was closing down. The question would be, what happened when they reached outside? Did each go his way or the whole group went together? In my view, the Investigations Officer should have carried out more investigation on the mentioned people like Solanki, M'Ntongondou and Goerge to establish what happened once the patrons were outside the bar. Kiogora was the first to be arrested but later released and allegedly treated as a witness but was never availed to testify for reasons that he could not be traced. This court should have been told the reason why the DPP decided to treat Kiogora as a witness. Since accused is said to have left the bar in the group that had been drinking therein, all the people that left the bar with him then, are suspects. They all had an opportunity to murder deceased. It is not clear why only accused was picked upon.

The only other evidence adduced by the prosecution that may have linked accused to the offence is that accused was found to have soaked/washed his clothes and a greenish coat he was found with, had blood stains and it was taken to Government Chemist for analysis to establish whether there was blood on it and whose blood it was. The Government Analyst, PW5, did not find any blood stains on the said coat (Ex.5). I find that the Investigations Officer acted so negligently that he did not take any blood samples from both the accused and deceased to compare with the blood stains on the stone, shirt and trouser (Ex.1-3) so that, even if blood stains had been found on accused's coat, the analyst would not have been able to ascertain whose blood it was. PW5 could not find out whose blood was found on the shirt, stone and trouser. PW5's evidence was really worthless in the circumstances. In the end, there is really no direct evidence linking accused with the offence or evidence to corroborate PW4's evidence that the deceased left the bar with accused. There were many more suspects than accused.

In my view, the investigations were carried out in a very shoddy manner leaving very many loose ends with many suspects out there. The prosecution should have adduced evidence as to why the prosecution, out of all those present at the bar on the said evening, picked on accused alone.

To prove an offence of murder, the prosecution has to prove beyond any doubt;

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

The death of deceased is not in dispute. The evidence of PW1 to 3 did confirm the death of deceased. Post mortem was carried out by Dr. Diana who found that he died of internal haemorrhage following blunt trauma to the chest, abdomen and head with multiple fractures.

As to whether the accused is the one who murdered the deceased? I find that the circumstantial evidence does not unerringly point to accused as the culprit and therefore malice aforethought cannot be imputed against him. He is however a prime suspect but suspicion alone, however strong, cannot found a conviction. In the end, I find that the prosecution has failed to prove its case to the required standard that is beyond reasonable doubt. Accused is given the benefit of doubt and acquitted under **Section 322 of the PC.**

DATED, SIGNED AND DELIVERED THIS 8TH DAY OF SEPTEMBER, 2016.

R.P.V. WENDOH

JUDGE

8/9/2016

PRESENT

Mr. Mulochi for State

Mr. Kaumbi for Accused

Ibrahim/Peninah, Court Assistants

Present, Accused