



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 47 OF 2012

REPUBLIC PROSECUTOR

V E R S U S

CHARLES MUNENE MEME ACCUSED

JUDGMENT

Charles Munene Meme 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 7/4/2012 at Muringene Location in Igembe South District, Meru County, jointly with others not before the court, murdered **Patrick Solomon**. The accused denied the offence and the case proceeded to full trial. The prosecution called a total of three witnesses. The prosecution was led by Mr. Mungai. When called upon to defend himself, he testified on oath and called one witness. Accused was represented by Mr. Ringera.

The prosecution case is as follows: **PW2 Joseph Maore**, on 7/6/2012 about 4.00 p.m., while at his place of work, saw Munene, Kamau and Grace pursuing Solomon; that they were armed with *pangas*. When they reached near where he was, he was hit with a stone at the back of the head and he fell. Those pursuing him caught up with him and started to cut him. Grace then told them to stop and they all went away just as they had come. Some people who had been watching from afar went near. He called his landlord Mbaabu to accompany him to make a report to the Chief, but he was told to make a report to Maua Police Station. He then got an ambulance to take the person to hospital but by the time he got the vehicle at 8.00 p.m., Solomon was dead and he went back to report at the Police Station. PW2 said he knew the accused before because the accused and those he was with were his customers in his shop (canteen), but did not know their full names. He denied knowing the deceased before.

PW3 PC Joseph Kiminda of Maua Police Station was the Investigation Officer in this case. He received a report of murder on 8/4/2012, went to the scene which was near a kiosk. He observed the body which had several cut wounds on the head and hands. He interrogated people around who informed him that deceased was attacked by three people; he recorded witness statements; that the Chief arrested accused and he went to collect him but his two accomplices were never traced. He learnt that the attack on deceased was because he was a watchman of a *miraa* farm and had become a hindrance to the assailants who wanted to steal the *miraa*. The post mortem report was produced by **Dr. Koome (PW1)** on behalf of Dr. Kimani who conducted the post mortem. The Doctor found that the deceased had cut wound on scalp; haematoma on scalp; Stab wound to left chest, stab wound to the right chest wall, cut

wounds on elbow, left wrist, left lumbar, stabs to the liver, etc. He formed the opinion that the cause of death was excessive haemorrhage due to chest and lung trauma due to multiple stab wounds due to epidural and subdural haematomas.

In his sworn defence, accused stated that he sells miraa and used to work for a person by name Yusuf; that on 7/4/2012 he sold his *miraa* upto 1.00 p.m. and went to meet Yusuf at Maua till 6.00 p.m. when he went back home. Next day when in the *shamba* selling grass, he argued with Kimathi and Maore who claimed that the grass was causing people to steal their *miraa*. He left for work. After 15 days, Chief Hezekiah went to their *shamba* and harvested *miraa* which he had done since 2008; that the *miraa* land belonged to his deceased father. He warned the Chief to stop harvesting the *miraa* and went to the Chief's office but did not get the Chief since his wife had delivered on 18/4/2012. He went back on 5/5/2012 and explained to him what he wanted with the woman but the Chief got annoyed claiming elders allowed him onto the land; that he harvested the *miraa* and sold them and the Chief then threatened him that he would never see *miraa* again; that on 6/6/2012 when at work, the Chief went there with Police and arrested him and he was later informed of the murder charge which he had no knowledge of; that Joseph Maore was an employee of the Chief and he denied having seen him on 7th April; that he never left home till his arrest. He also stated that Maore did not own any kiosk but guarded the Chief's *miraa*.

Accused's wife **DW2 Rosalina Nkatha Munene**, told court that in April 2012, he had a quarrel with a *miraa* watchman; that the *miraa* was leased to Hezekiah; that they alleged her and her husband had stolen his *miraa*. She was not present but one Ziporah Ncharu separated the watchman and her husband; that her husband continued to trade in *miraa* till his arrest on 6/6/2012 and that police went to look for accused at his home. She produced record to show that she got a baby on 18/4/2012.

To prove an offence of murder, the prosecution needs to establish that:

1. The accused committed the act that caused the death (*actus reus*) and
2. That the accused had the intention to cause grievous harm or cause death (*mens rea*).

Mens rea is referred to as malice aforethought which is broadly defined under **Section 206 of the Penal Code** as an intention to cause grievous harm or cause death.

There is only one eye witness to this incident, the other witnesses having gone underground for unknown reasons. Under **Section 143 of the Evidence Act**, evidence of a single witness can prove a fact unless a statute provides that there should be more than one witness. In this case, PW2 told the court that he was at his place of business where he operates a hotel (shop) when he saw three people chase the deceased, one hit him with a stone, he fell and the three descended on him and were armed with *pangas* and started to cut him. In cross examination, he maintained that he knew the three people who chased and assaulted the deceased; though not both names. He used to see them at their home area and they were his customers in his kiosk (shop).

In his defence the accused claimed to have had disagreed with the Chief of the area over a *miraa shamba* that belonged to his father and which the Chief had leased. This defence came as a total surprise and afterthought. At no time during the cross examination of PW2 and 3, did the accused allege that PW2 was an employee of the Chief with whom they had a disagreement over a *miraa* farm. DW2, the accused's wife repeated the same allegation. If indeed there existed such a dispute between PW2 and the Chief Hezekiah, that should have been alluded to in the cross examination of PW2 and 3. I dismiss the defence as an afterthought. I prefer the testimony of PW2 that was consistent and unshaken. The offence was committed in broad daylight at 4.00 p.m. PW2 told the court that he is the one who even went to look for transport to try and get the deceased to Hospital and reported to Police. He was a credible witness.

There is no reason why PW2 would frame accused when it is not even known who murdered the deceased. PW3 who visited the scene next day said that PW2 informed him on the day, he visited the scene that it is the accused and 2 others who caused the deceased's death. The accused was named as the

culprit soon after the commission of the offence. This goes to cement the fact that it is accused and others not in court who caused deceased's death. According to PW3, he learnt that the deceased was murdered because he was guarding *miraa* and was a hindrance to those who wanted to steal it.

PW1 produced the post mortem in which Dr. Kimani made his findings after examining the deceased. The deceased sustained multiple cut wounds, stab wounds on the head and body and the Doctor formed the opinion that the cause of death was excessive hemorrhage due to chest and lung trauma due to multiple stab wounds due to epidural and subdural hematoma. These injuries are consistent with evidence of PW2 that the accused and others were armed with *pangas* which they used to assault the deceased.

In the end, I am satisfied that the prosecution has proved beyond any doubt that it is the accused and others not in court who inflicted the fatal injuries on the deceased. The multiple injuries inflicted on the deceased speak loud, that the assailants' intention was to cause him grievous harm or cause his death which is evidence of malice aforethought. Accused is found guilty of the offence of murder as charged and he is convicted under **Section 322 of CPC**.

DATED, SIGNED AND DELIVERED THIS 1ST DAY OF DECEMBER, 2015.

R.P.V. WENDOH

JUDGE

1/12/2015

PRESENT

Mr. Mulochi for State

Mr. Ringera for Accused

Ibrahim, Court Assistant

Accused, Present