



COURT OF KENYA

AT NAKURU

MURDER NO. 62 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

HARUN KARANJA WANDURU.....A.CCUSED

JUDGMENT

Harun Karanja Wanduru is charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. He is alleged to have murdered Daniel Kimani Thuita on 12/8/2011 at Piave Location (Kahuho Village). The case proceeded to full hearing. in Njoro, Nakuru County. He denied committing the offence. In support of their case the prosecution called a total of eight (8) witnesses while the accused gave evidence on oath in his defence but did not call any witnesses.

PW1, Ruth Wangari Ndichu, a resident of Piave who was known to both the deceased and accused testified that on 12/8/2011, she was on her way to buy charcoal about 6.15 p.m. She found the deceased with other boys at a junction and after passing them, the deceased told them that since it was raining, he would walk home with PW1 since it was same direction. As they walked, the deceased emerged from the maize plantation and remarked that he would kill the deceased person that day. She said that the accused got hold of the deceased by the hand and she ran off as she screamed. People gathered and on coming back to the scene, she saw the deceased lying down on the ground, dead and there was blood on his sweater. She denied having seen accused carrying any weapon.

PW2, J W, a child aged 8 years underwent avoivre dire examination and was found not to understand the meaning of the oath the court therefore directed that she give unsworn evidence. She said that she knew both the deceased and accused. She recalled that on 12/8/2011 about 6.00 p.m., the deceased was with Kare (PW1); PW2 was about 100 meters away and she saw the accused stab the deceased and ran off. She went where the deceased fell and saw blood on the chest and neck. She did not see where deceased came from before stabbing the deceased.

PW3, Peter Ngugi Kamau, the Assistant Chief of Kahuho Sub-Location, knew both deceased and accused as his subjects. On 12/8/2011, about 6.00 p.m. he received a call informing him of an incident and he went to the scene which was on the road; found the deceased had been stabbed on the neck. The scene was about 100 meters from accused's home and he sent people in search for the accused but they did not find him even on the next day but later, accused surrendered himself to Central Police Station Nakuru. PW3 gathered all witnesses who included PW1, PW2 and PW4 and took them to Njoro Police Station to record statements. He denied knowing the cause of the murder because accused and deceased used to be friends and used to belong to a group called "Kamiti".

PW4, S K, a child aged 11 years gave a sworn testimony after the court was satisfied that he understood the meaning of the oath. He knew both the deceased and accused. He recalled that on 12/8/2011 about

6.00 p.m. he had been sent to the shop and when returning home, he saw the accused's mother on the road. The accused then emerged from the maize and told the deceased that he will kill him. He was about 15 meters away. It is then accused stabbed deceased on the chest. PW4 ran off. He went to tell his aunt, Sara who called the Chief on phone. He said that when PW1 ran off he saw Harun's mother hold the deceased's hands from the back.

PW5, Antony Nyoro, a resident of Piave, told the court that both deceased and accused were his friends. On the fateful day, he was with the deceased at a junction when coming from work. It started to rain, and the deceased decided to leave for his home and they parted. After parting, he heard screams and he ran to the direction of the scream. He met the accused and his mother coming from where the deceased had been stabbed. On reaching where the deceased was lying and seeing him injured, he went to call the deceased's people. PW5 denied that he knew of any dispute between accused and the deceased. He also saw the accused with a knife which had blood when he met accused and the mother about 100 metres from the scene where the deceased was lying.

PW6, PC Mwakibaya Kibaya, of Njoro Police Station was one of the police officers who went to the scene of the murder on the same night at about 10.00 p.m. and was the investigation officer. He said the body of deceased lay on a foot path. They took to the body to the mortuary and accused surrendered to Central Police Station Nakuru on 14/8/2011. He said that from investigations, he found that accused owed the deceased some money and that the deceased had gone to accused's place of work asking to be paid the said debt. PW6 is aware of the existence of a group called "Kamiti" to which both accused and deceased belonged.

Post mortem on the body of the deceased was conducted by Dr. Titus Ngulungu of Provincial General Hospital Nakuru (PW7). He found that the deceased had sustained one incision wound below the chin, 3cm long; another at the right clavicle region; There were also 2 incision wounds 2cm long on left shoulder. Internally he found the lungs had collapsed, chest cavity with blood, aorta was severed. He formed the opinion that the cause of death was severe chest and vascular injury with massive haemorrhage due to stab wounds to the upper chest.

After the close of the prosecution case, the accused was called upon to defend himself. The accused gave a sworn testimony. He told the court that the deceased gave him batteries to charge for him and one burst. The deceased insisted that he had to pay. The accused asked him to wait till Friday when he would be paid. The accused paid him Kshs.100/- on Saturday but he insisted on being paid the balance of Kshs.50/-. After a week the deceased went to accused's home, found the mother and started to abuse her. From then on, accused's mother had to escort him to and from work as the deceased used to waylay him with a metal bar on the road. On the fateful day, he left work and found deceased and Anthony, (PW5), at the gate. The watchman declined to escort him but before he went far, the deceased caught hold of him, assisted by PW5, they beat him up. He was rescued by the watchman and one Ng'ang'a. When near his home, the deceased emerged from the bush where he was hiding and started a fight with the accused. The accused pushed him and the deceased seemed to have been injured and got up with a knife and wanted to stab the accused but accused got hold of him. The deceased hit accused on the mouth removing accused's tooth. The accused managed to push the deceased, he fell and said he had won but when deceased sat up, the accused saw blood. Accused left the deceased and went home. When he heard people saying that he should be caught, he ran, hid in the maize plantation till the next day when he surrendered to the police at Nakuru to avoid being attacked by the group called 'Kamiti' to which the deceased belonged. He denied stabbing the deceased.

In his defence, the accused did admit that he had a confrontation with the deceased arising from a debt of Kshs.50/- which he owed the deceased. This incident occurred in broad daylight along the road. PW1, Wangari also referred to as 'Kare', PW2 M, a child aged 8 years and PW4, S K aged 11 years old, told the court that they witnessed the incident. PW4 did corroborate PW1's evidence that PW1 was near the deceased at the time of the incident. The testimony of the three on how the incident occurred is totally different from what the accused told the court. According to accused the deceased was with Antony Nyoro, PW5, when they attacked him. PW5 was cross examined and even recalled but his testimony was not shaken. He denied being at the scene at the time when the deceased was injured by accused. PW5

told the court that he had just parted with the deceased who left with PW1 going same direction when he heard screams and on running to the scene of screams, first met accused and the mother and then found the deceased had been injured. He did not witness the incident. PW1, 2 and 4 did not see PW5 at the scene. Unlike PW1 and PW2, PW4 also told the court that he saw accused with the mother at the scene. It seems accused's mother appeared at the scene during or soon after the assault on the deceased. Although the accused claimed that PW1, PW2 and PW4 are friends or related to the deceased in some way insinuating her they had framed him, I do not believe the accused. It is PW3, the chief of the area who gathered all the witnesses, PW1, 2 and 4 immediately after the incident and took them to record statements. The accused has not alluded to any reason why PW3 would frame him. I believe and find that even if, PW1, 2 and 4 were related to the deceased in some way, their evidence corroborated each other in material particulars and they did witness the confrontation between the accused and deceased. It is during that confrontation that the deceased was fatally injured.

According to PW1 who said she was walking home with deceased, it is the accused who emerged from the maize, threatened and attacked the deceased. The evidence of PW1 & 4 does disclose that indeed there was maize nearby and that is where accused emerged from. It seems the accused had waylaid the deceased. PW1 never saw any knife. PW4 and PW5 claim to have seen the accused with a knife. I have considered the accused's defence as to what happened. According to him it is the deceased who had a knife and what he wants the court to believe is that during the scuffle, the deceased injured himself. The accused also claimed to have lost a tooth during the scuffle though no mention of the injury was made when he first came to court nor was that kind of defence put to any of the prosecution witnesses and therefore came as an afterthought. The court cannot ascertain when he lost his tooth. His defence is therefore that he was acting in self defence. But that is far from the truth, because the injuries inflicted on the deceased tell a different story. PW7, Dr. Ngulungu who examined the deceased found the following injuries. On the head was an incision wound 2cm; right shoulder had 2 incisions 2cmx5cm; a stab wound at the supra clavicle region 20mmx10mm and left shoulder 2 incision wounds 2cm. The aorta was severed. PW7 was of the opinion that the injuries on the shoulder were inflicted from the back. The numerous stab wounds inflicted on the deceased and the fact that some injuries may have been inflicted on the deceased from the back, totally dislodges the accused's defence that in fact it is him who was attacked or that it is the deceased who had the knife, and attacked him. I prefer PW1, 2 & 4's evidence that it is the accused who attacked the deceased. Their evidence was not dislodged by the defence. I find that the attack on the deceased is something that was planned and premeditated which proves malice aforethought by the accused. The accused did not only intend to injure the deceased but the repeated stab wounds are evidence that accused intended to end the life of the deceased, which he did.

I find that he is the one who murdered the deceased. At the time of the plea the accused age was assessed and he was found to be 17 years old. Pursuant to Section 25(1) of the penal code and Section 189 of the Children's Act, I direct that the accused be detained at the President's pleasure.

DATED and DELIVERED this 16th day of May, 2014.

R.P.V. WENDOH

JUDGE

PRESENT:

Mr. Gichui for the Accused

Mr. Nombi for the State

Kennedy – Court Clerk

Accused - present