



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
HIGH COURT CRIMINAL CASE NO. 31 OF 2009

REPUBLICPROSECUTOR

VERSUS

JOSEPH KURIA MWANGI.....ACCUSED

JUDGMENT

1. The accused, **JOSEPH KURIA MWANGI**, was on trial for the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code.
2. The prosecution's case was that on 18th March 2009, the accused person murdered his father, **MWANGI KURIA**.
3. **PW1, FRANCIS MWANGI KURIA**, is a brother to the deceased.
4. He got to the scene after his brother had been killed. He found the body lying on the ground, facing down.
5. During cross-examination, PW1 said that his late brother had never told him about any disagreements between him and the accused.
6. PW1 was aware that the accused person used to have a mental problem, and that he used to receive medical treatment at the Mathari Mental Hospital.
7. Later, PW1 identified the body of the deceased at the City Mortuary, for the purposes of post-mortem examination.
8. **PW2, PETER MUIRURI MWANGI**, is a brother to the accused person.
9. At the time when the deceased was killed, PW2 was at his place of work, in Ndithini, Masinga. He went home at about 5.00 p.m, after he had completed the work for that day.
10. As Peter was not at home when his father was fatally assaulted, he confirmed that he did not know who committed the offence.
11. Peter also testified that the accused was not mentally stable. This is how he explained the status of the accused;

“He used to do good things; but he would then do things which were confusing”.

12. In respect to the relationship between the accused and the deceased, Peter said that it was good.
13. **PW3, SAMUEL KUNGU GATHOGO**, was the Assistant Chief of Gethanini Sub-location, in Ithanga, Thika.
14. On 18th March 2009, Samuel was attending a Staff Meeting at the Chief's Office, when **AP ELIUD MURAGE** phoned him. The Administration Police Officer told him that the accused had gone to the Gethanini Police Post.
15. Samuel knew the accused person, as he hailed from his area of jurisdiction. As he had known the accused for many years, Samuel told the court that he knew him very well. This is his description

of the accused person;

“Since I knew the accused, he used to behave sane at times; but at times, he behaved in an insane manner. His family had requested the community to bring the accused to Mathari Hospital, if they found him behaving insane”.

16. It was Samuel’s testimony that about 2 to 3 weeks before the incident, he had heard that the accused person was insane and that he had been taken to hospital. Indeed, the accused only returned home from the hospital about a week prior to the incident.
17. **PW4, DR. DOROTHY NJERU**, was a forensic pathologist. She is the doctor who conducted the post – mortem examination on the body of the deceased. Her conclusion was that the cause of death was head injury, due to blunt trauma.
18. That conclusion was informed by the fact, inter alia, that the deceased had suffered a fractured skull, with bleeding onto the brain.
19. **PW5, CPL AHMED SHEIKH HUSSEIN** was a police officer who was attached to the Gitwamba Police Station at Thika.
20. On the material date, PW5 received a phone – call from Chief Inspector Nacio, who was then the OCS at Gitwamba Police Station.
21. The OCS had, reportedly, learnt that the Administration Police Officers at the Kiraraini AP Camp were holding a murder suspect.
22. CPL Hussein rushed to the AP Camp, where he found the accused, who was being held by the Administration Police Officers.
23. Those officers handed over to CPL Hussein a panga and a rungu. The said panga had a few blood stains, whilst the rungu had a lot of blood stains.
24. CPL Hussein then went with the accused person, to the scene of crime, which was about 2 kilometres from the AP Camp.
25. At the scene, CPL Hussein found the body of the deceased, lying in a pool of blood.
26. Later, the police removed the body from the scene and escorted it to the Thika District Hospital Mortuary. Meanwhile, the accused person was placed in custody, and the rungu and panga were kept in the store at the police station.
27. During cross – examination, CPL Hussein said that at the time of the incident, the accused person had apparently intervened to stop the deceased from demolishing a house.
28. According to CPL Hussein, the body of the deceased was lying about 10 metres away from the house which was being demolished.
29. **PW6, STEPHEN MATINDE JOEL WAIBE** is a Government Analyst, attached to the Government Chemist.
30. He analysed blood samples from both the accused and the deceased. He found that the blood of the accused was of blood group “A”; whilst the blood of the deceased was of blood group “O”.
31. Waibe also verified that the blood samples on the panga and on the rungu which the police delivered to him, were both of the blood group “O”. In effect, the blood on the panga and on the rungu matched the blood of the deceased.
32. Waibe concluded that the blood on the panga and on the rungu may have come from the deceased after he had been injured.
33. **PW7, APC ELIUD MURAGE**, was stationed at the Kiraraini AP Post at the material time.
34. He was at the AP Post when the accused arrived, whilst carrying a panga and a rungu. Both items were blood stained.
35. APC Murage arrested the accused. At the time of his arrest, the accused did not have any injuries on his body.
36. Whilst APC Murage was waiting for a vehicle which would ferry the accused from the AP Post to the Police Station, **JANE MUTANU MWANGI**, arrived. That lady was the step – mother of the accused.
37. She told the AP officer that the accused had killed her husband.
38. The officer relayed that information to the Assistant Chief (PW4). It was the said Assistant Chief who then called for the police vehicle from Gitwamba Police Station.
39. At the time when the accused met APC Murage at the AP Post, the accused was carrying a small container which had tablets. The accused told Murage that he was using those tablets because he

- was a mental patient.
40. However, according to the AP Officer, the accused did not look like an insane person, as he was answering questions clearly.
 41. **PW8, PC GEOFFREY BITEI**, was a police officer who was attached to the Gitwamba Police Station at the material time.
 42. He kept the panga and the rungu safely, at the police station.
 43. He also escorted the relatives of the deceased to the mortuary, where those relatives identified the body, for purposes of post – mortem examination.
 44. PC Bitei also escorted the panga and the rungu to the Government Chemist, for analysis.
 45. **PW9, PC JOHN KIPYEGON**, was at the Gitwamba Police Station when the police got information about the murder of the deceased.
 46. He is one of the officers who re – arrested the accused from the AP Camp.
 47. Thereafter, the police escorted the accused back to the scene of crime, where they later collected the body of deceased.
 48. At the scene, PC John Kipyegon noted that two of the houses in the homestead of the deceased, did not have doors or windows.
 49. His investigations revealed that the deceased is the person who had removed the doors and windows. His reason for doing so was to evict the family of his first wife.
 50. The accused showed to the police one of the houses whose door and window had been removed; he said that that was the house he had been living in.
 51. After PW9 testified, the prosecution closed its case.
 52. Thereafter, the court put the accused to his defence. The accused gave an unsworn Defence.
 53. He said that he used to hawk water in 20 litre jerry-cans. He used to get the water from boreholes, and he would then sell the water at the market place.
 54. As regards the demise of his father, the accused said that his father had demolished the house which the accused used to live in. That incident was reported to the police, by the accused.
 55. Although the accused did not get the help he expected from the Village Elder and the Chief, he decided to vacate his father’s compound.
 56. Whilst he was in the process of getting out his belongings from his house, the deceased confronted him. According to the accused, his father had a panga and a Somali sword.
 57. When his father tried to strike him with the panga, the accused used a piece of wood to protect himself. His testimony was that he was hitting at the weapons which his father had.
 58. But at one time, the piece of wood struck the deceased, instead of the panga which the deceased had. At that moment, the deceased also fell down.
 59. The accused picked up the panga which the father had dropped, and he went to report at the AP Camp.
 60. Whilst the accused was at the AP Camp, he learnt that his father had died.
 61. Having given due consideration to the evidence tendered, it is clear that the accused person hit his own father, resulting in death.
 62. The prosecution led evidence which showed that although the accused used to have lucid moments, there were other moments when he needed medical treatment at the Mathari Mental Hospital.
 63. Indeed, at the time of the incident, the accused had only just been back home for about one week. Prior to that, the accused had had a stint at the Mathari Mental Hospital.
 64. This is an unfortunate case. I so find because the accused was well known to have had a history of mental illness. From the evidence adduced by the prosecution, the accused was known to act “*normally*” at times, but he could then change and act in ways that were inexplicable.
 65. In the circumstances, I hold the view that although a person who puts forward the defence of insanity was obliged to prove his said defence, in this case the evidence from the prosecution itself brought out doubts about the sanity of the accused. Therefore, I hold the view that the accused herein did not then have to lead evidence to prove something which had already been brought out by the prosecution.
 66. Of course, the evidence did not go so far as to show that at the precise time when the deceased was assaulted the accused person was actually not in control of his mental faculties.
 67. I am aware that under Section 166 (1) of the Criminal Procedure Code, when a person commits an offence when he was either insane or was otherwise not responsible for his actions or omissions,

- due to a disease of the mind, the court ought to make a special finding that the person was guilty but insane.
68. When that is done, the court would then report the finding to the President of the Republic of Kenya, whereupon the person would be held in appropriate custody, at the pleasure of the President.
69. In this case, the accused did assault his father, and the father died as a result of the said assault. It is probable that the accused was suffering from an infirmity of the mind at the time he committed the offence.
70. When a person has an illness of the mind, he may not be responsible for his actions. Therefore, in my considered view he may be incapable of having malice aforethought, in terms of Section 206 of the Penal Code.
71. In order to be said to have malice aforethought, the person should have;
- a. *An intention to cause death or grievous harm; or*
 - b. *Knowledge that his action or omission would probably cause death or grievous harm, even if such knowledge is then accompanied by indifference whether death or grievous harm is caused or not; or*
 - c. *An intention to commit a felony; or*
 - d. *An intention to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.*
72. As each of those ingredients of malice aforethought has an element of the presence of mental ability, it would not be possible for a person to have malice aforethought when his mental faculty was infirm.
73. I therefore believe that the person would then be unable to commit the offence of murder.
74. The action of assaulting the deceased was unlawful, and it caused death. For that reason, and because of the lack of malice aforethought, I find the accused guilty of the lesser offence of Manslaughter. He is accordingly convicted for the offence of Manslaughter.

DATED, SIGNED and DELIVERED at NAIROBI this 6th day of November 2014.

FRED A. OCHIENG

JUDGE

Judgment read in open court in the presence of

.....for the Prosecution

..... for the Accused.

Mr. C. Odhiambo, Court clerk.