



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL CASE NO. 61 OF 2010

LESIIT, J

REPUBLIC.....PROSECUTOR

V E R S U S

MOSES MURITHI IKAMATI.....ACCUSED

JUDGEMENT

1. The accused Moses Muriithi Ikamati is charged with murder contrary to section 203 as read with section 204 of Penal Code. The Particulars of the charge are that on 25th September, 2010 at Thinyaine Location, in Tigania West District within Eastern Province murdered Michael Mwenda.
2. The Prosecution called seven witnesses. The prosecution case was that on 25th September, 2010 at about 8 pm the accused and deceased walked and stopped just outside the popular Mens Bar when they started quarrelling. The deceased was heard asking the accused whether his mother and him were serious about their threats to kill him. The accused was then heard answering the deceased that he would know who he was. The accused then left the bar for five minutes. He returned to the bar and went straight where the deceased was seated and stabbed him on the neck. The deceased died on the road as people were carrying him to the Police Station. The accused ran away. He surrendered to the police 2` days after the incident.
3. The accused gave a sworn defence. His defence was that at 11 am on material day he entered three sixty wines and spirits at Ngunduni where he started drinking alcohol up until 11 pm. He stated that he had found the deceased in the bar drinking and that the deceased left before him. He said like him the deceased was also drunk when he left the bar. The accused changed and said he left the bar at 5 pm with an intention of going to popular Mens Bar but that he never went there because his business colleague, one Kamuyu called him on phone. He then met him at the stage and they took a taxi and proceeded to Isiolo. They arrived at 10 am. They spent 2 days at his relatives place called Toma. That on 27th September `at 2 pm Patrick Kimathi, his friend called him from Ngunduni and advised him to go to the police as he was being sought for murder which took place at Ngunduni. He said that his friend Kamuyu took him to Isiolo Police Station where he was held until 29th September, 2010 when Police Officer from Ngunduni Station released him. He stated that he had known the deceased since childhood but said he had never associated with him or had any business together.
4. I carefully considered the evidence adduced by the prosecution and also by the defence. Mr.

Rimita gave submissions on behalf of the accused person. In those submissions counsel urged that the evidence given by the prosecution witnesses was contradictory, and that those contradictions raise doubts on the prosecution case.

5. Mr. Mungai in response urged that the witnesses who testified in the case gave eye witness account and stated that they saw the accused stab the deceased in a bar. Counsel urged that there was ample evidence that the accused and the deceased were first seen quarreling after which the accused left briefly and returned armed with a knife with which he stabbed the deceased on the neck before running away. Mr. Mungai urged that eventually the accused person surrendered to the police at Isiolo Police Station.
6. The evidence by the prosecution was that of PW1, 2, and 3. These are witnesses who were present at the scene at the time of the incident. PW1 was the bar man while PW2 and 3 were customers of Popular Mens Bar. The evidence is on record. PW1 who was the bar man said he had a maximum of 7 customers in his bar. It was in the night. It was about 8 pm. There was electric light both inside and outside the bar. According to PW1 he noticed the accused and the deceased when they walked up to the entrance to the bar and stood out quarreling with each other. After the quarrel he saw the accused leave and then after 5 minutes the accused returned stabbed the deceased on the neck before disappearing into the night. PW2 and 3 testified that both the accused and the deceased had been in the bar but were not drinking when they saw them. They said they walked out together to the entrance of the bar where they started quarreling. Before the accused left after which he returned with a knife and stabbed the deceased. According to PW3 he was sited behind the deceased on the long bar stools. After the accused left soon after quarreling with the deceased. PW3 described that the deceased sat with his back against an open area on the wall of the bar. He said he saw the accused approach stab the deceased on the neck before running away. PW2 was also sited at the counter of the bar and he also confirmed that he also witnessed the accused stab the deceased on the neck.
7. The evidence of PW1, 2 and 3 has variations. I do not consider these variations as contradiction in their evidence for reason I will demonstrate. PW1 was the bar man and was busy with about 7 customers. According to his testimony he only noticed the deceased and the accused and they stood outside his bar to quarrel. He had not noted that they were in the bar before that quarrel started. PW2 and 3 who were customers both testified that the accused and the deceased had been inside the bar before walking out to quarrel. I find that the differences between the evidence of PW1 on one hand and PW2 and 3 on the other in regard to whether both accused and deceased had been inside the bar before standing at the door to quarrel is a mere variation in the evidence. I find that it is not of material importance since it does not go to the substance of the prosecution case. There is an explanation for that omission due to the fact that PW1 was busy selling to customers. According to PW2 AND 3 the accused and deceased did not take any drink in that bar. It was therefore easy for PW1 to overlook them since he did not serve them that evening.
8. The evidence that the accused and the deceased stood outside the bar to quarrel is consistent in the evidence of PW1, 2 and 3. The content of the quarrel is also consistent in the evidence of the 3 eye witnesses. They all heard the deceased asking the accused whether what his mother had said that the accused would kill him the deceased whether he was still serious about those threats. The 3 eye witnesses heard the response by the accused to the effect that the deceased would know who he was. Their evidence is also consistent that the accused left the bar area for 5 – 10 minutes and that in the meantime the deceased sat on a long stool with his back to an opening in the wall. The 3 eye witnesses were also consistent in their evidence that they saw the accused person return and walked straight to where the deceased was sited and stabbed the deceased on the neck through the opening on the wall. They also saw him running away.
9. I find that the evidence of the eye witness account was consistent and corroborating on all material particulars of the case. I am satisfied that the accused was seen first quarrelling with the deceased and confirming an earlier threat he had made that he would kill the deceased. He was then seen walking away and few minutes later returning armed with a knife with which he used to stab the

- deceased. PW3 described that the deceased was seated next to an opening to the wall and said that a person standing outside the opening could grab a person seated inside the bar next to the wall.
10. Mr. Rimita raised issue with the fact that some of the witnesses were locked up by the police and counsel urged that the reason for that was to enable the witnesses exonerate themselves. Mr. Rimita submitted that such witnesses cannot be relied upon in a charge of murder.
 11. Mr. Mungai in response urged the court to find that the witnesses who were locked up by the police are the ones who had carried the body of the deceased and had dumped him at the police station and had ran away. Counsel urged that these were drunkards and that their conduct should not affect the case.
 12. From the evidence of PW1 and 2 they reported the matter to the police after carrying the deceased partly towards the Police Station but abandoned the idea of taking him up to the Police Station when they recognised he had died. It is clear from the evidence that the deceased was carried by good Samaritans including PW1 and 2. PW1 and 2 did not ran away but were the people who reported the matter to the police and led the police to where the body was. PW5 Chief Inspector Dominic was with the OCS when they received the report of the murder from PW1 and 2. PW5 does not explain why they locked up PW1 and 2. PW6 PC Mosoti who also assisted in the investigations did not mention that any witnesses were locked up. I consider that the decision to lock up PW1 and 2 was at the very least part of the investigations strategy and that at the very most was out an intention to harass the witnesses before recording their statements. It was in my view totally unnecessary. That action cannot be considered as against the credibility of PW1 and 2 as it was not of their making.
 13. Mr. Rimita also submitted that the production of a cap was a desperate attempt to connect the accused with the offence which he urged failed because no witness at the scene mentioned the cap in their evidence. Mr. Mungai did not respond to this issue. I agree with Mr. Rimita the production of the cap as an exhibit in this case was misplaced because no witness testified about it except the Government Analyst Report produced by Chief Inspector Dominic PW5. That evidence was of no assistance to the Prosecution case.
 14. Mr. Rimita has urged the court that in the unlikely event that the court will find the evidence of the prosecution acceptable and should take into account the evidence of eye witnesses that the accused and the deceased were seen quarreling and that both were drunk and that in view of the accused defence that he had been drinking the whole day the court should take that into consideration and reduce the charge into the lesser offence of manslaughter.
 15. Mr. Mungai submitted that the prosecution had adduced evidence to prove that the accused person ran away from the scene but latter surrendered to the police at Isiolo Police Station. Mr. Mungai has urged that the defence of intoxication is not available to the accused because he denied involvement in the claim. He urged that court should not reduce the charge to manslaughter for the reason the accused in his defence has denied quarreling or stabbing the deceased.
 16. The evidence before the court shows that the accused and deceased quarreled briefly before the accused walked away and returned with a knife with which he stabbed the deceased. The deceased died soon thereafter. From the Doctors findings as presented by Dr. Makandi PW4, the cause of death was bleeding probably from the jugular as a result to a stab wound to the neck. The prosecution has established a nexus between the injury that caused the deceased death and the accused act of stabbing the deceased who was seen stabbing the accused on the neck area and the cause of death was bleeding from that area of the body.
 17. It is true that from the evidence of the eye witness especially PW1 both the accused and deceased appeared drunk at the time they were seen quarreling. If that was the only fact of the case with the evidence of drunkenness or intoxication Section 13(4) of the Penal Code would have been

relevant. That section requires a trial court to take into consideration the issue of intoxication in order to determine whether the person charged was capable of forming any intention to commit the offence. However from the evidence of the witnesses the content of the quarrel between the accused and the deceased concerned a threat the accused had issued against the life of the deceased at an earlier stage. It is the evidence of PW 1, 2 and 3 that when the deceased asked the accused whether he was still serious with the threat he had made that he would kill him the deceased, the accused had said that he would know who he was. It was 5 – 10 minutes later that the accused returned armed with a knife with which he stabbed the deceased.

18. I find that the fact of an issue of a death threat by the accused against the deceased, and the fact the accused went away to arm himself before stabbing the deceased these circumstances are a prove that prior to stabbing the deceased the accused person had formed a specific intention to cause death to the deceased.

19. It is on record that the accused stabbed the deceased on the neck. The choose of the area of the body that the deceased was stabbed is also evident of the fact that the accused intention was to fatally wound the deceased.

20. The accused conduct after the incident is also relevant he went into hiding for 2 days that was the conduct of a person with a guilty mind. The second conduct which also implicates the accused is that he surrendered himself to the police specifically for this offence. His conduct strengthens the case of the prosecution against him that it was him who committed this offence and that at the time he stabbed the deceased he had formed the necessary malice aforethought to cause death or grievous harm to the deceased.

21. The accused defence that he was a victim of mistaken identity cannot lie the evidence against him was overwhelming as demonstrated in the evidence of PW1, 2 and 3.

22. The learned counsel for the accused urged the court to consider intoxication in his final submissions in this case. The defence of intoxication can only be relevant in my view where an accused person has not put an alibi in his defence and also where the accused does not deny that he caused the injury that caused the death of the deceased. Even if the court were to consider intoxication that defence is not available to the accused for the reasons I have already given that from the quarrel he had had with the deceased just before the incident established that the accused had already threatened to kill the deceased earlier before this incident. The accused person had both planned to cause harm to the deceased prior to the incident in question and it cannot therefore be said that his actions on the material time were influenced by drink.

23. Having carefully considered the evidence adduced by the prosecution in this case and the accused defence I find that there is overwhelming evidence to prove that the accused person murdered the deceased. I therefore find that the prosecution has proved the charge against the accused person beyond any reasonable doubt. I therefore find the accused person guilty of murder as charged and convict him accordingly.

DATED SIGNED AND DELIVERED AT MERU THIS 3rd DAY OF OCTOBER, 2013.

J. LESIIT

JUDGE