



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CRIMINAL CASE 13 OF 2008

REPUBLIC.....

.....PROSECUTOR

-versus-

LAWRENCE MAINA

IRUNGU.....ACCUSED

J U D G M E N T

Lawrence Maina Irungu, is before this court facing 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 the 12th day of February, 2008 at Kirembu Village, Chui Sub-Location in Gitugi Location within Murang'a District of Central Province, murdered his father, Humphrey Irungu Mwangi.*

A total of 10 witnesses testified in support of the Prosecution's case. The case against the accused is explained by the evidence of Francis Macharia Mwangi (P.W.2) and Agnes Muthoni Kamau (P.W.3) being the eye witnesses. P.W.3, Agnes Muthoni Kamau, the mother of the accused told this court that on 12th February 2008, she spent the night together with Francis Macharia Irungu and Humphrey Irungu Mwangi (deceased). At about 6.00 A.M., in the morning of 12th February 2008, P.W.3 and P.W.2 said the deceased left the house to answer a call of nature. Shortly, the duo heard the deceased scream. They ran out of the house and saw the accused who was dressed in a blue trouser jeans and a black T-Shirt hit the deceased using a fork-jembe. P.W.3 said she screamed forcing the accused to run away. The deceased fell down and became unconscious. The neighbours i.e. P.W.4, Francis Macharia Mwangi, Edward Mwangi Gititu (P.W.5), Peter Chege Kimotho (P.W.7) and Florence Nyambura (P.W.9) ran to the scene where they found the deceased lying unconscious. They took the deceased to Murang'a Police Station and thereafter to Murang'a District Hospital where he was pronounced dead on arrival. The Accused is said to have fled the scene but was found the next day hiding in the forest by members of the public who promptly arrested him and took him to the Police Station where he was re-arrested by P.C Musembi P.W.10. In the year 1997, the accused had a dispute with the deceased relating to a meeting of a Coffee Factory Committee. P.W.10 produced the post mortem report prepared on the deceased by Dr. Mwangi. In the aforesaid report, the Doctor formed the opinion that the cause of death was severe brain injury. The Accused on his part, when placed on his defence admitted having killed the deceased using a fork-jembe five times.

In his unsworn testimony, the accused said he had quarreled with the deceased when he removed his

property from his house and caused him to be evicted. He further alleged that the deceased had sold the family land without consulting him and that is why he was annoyed. He claimed that he did not plan to kill him. He explained in details how he executed his plan to kill the deceased. He said he saw the deceased in the morning of 12th February 2008 go to relieve himself in the toilet. He took a fork-jembe and waited for him to come out. When he came out, he said, he hit him on the head after which he fled to hide. He spent the night at Chui Centre and in the morning of 14th February 2008, he was arrested by members of public while he was on his way to Mathioya.

In order for the offence of murder to be established, two ingredients must be proved. One, the element of *actus reus*, and secondly, the element of malice aforethought. In the case before this court, it is obvious that Humphrey Irungu Mwangi (deceased) died as a result of the injuries inflicted on him in the morning of 12th February, 2008. It is also not in dispute that those injuries were inflicted by the accused. P.W.2 and P.W.3 saw the accused assault the deceased using a fork-jembe. The accused, when placed on his defence, admitted having used a fork-jembe which was produced in evidence by P.W.10 as an exhibit. The accused said he used a fork-jembe to hit the deceased five times. The fork-jembe was found by Florence Nyambura (P.W.9), while she was cutting grass. The Accused did not deny using the fork-jembe. In the postmortem report prepared by Dr. Mwangi and produced by P.W.10, the following injuries were noted:

- *Multiple bruises on the legs, back and shoulders.*
- *Fractured right radius and ulna.*
- *Fractured right parietal bone with skull embedded into the brain matter.*
- *Cut wound on the vertex of the skull.*
- *Bleeding from the left ear.*
- *Destroyed brain on the right cerebral hemisphere.*

In a nutshell, it is obvious the deceased did not die out of natural causes. The element of *actus reus* is established. The accused was seen by P.W.2 and P.W.3, assaulting the deceased. It was early in the morning and hence the duo were assisted by daylight to see how the deceased was killed. The question which needs to be established at this stage is whether the element of malice aforethought was established. It would appear from the evidence of the accused when placed on his defence, that he basically said that he had no malice aforethought at the time of assaulting the deceased.

I have carefully analysed the evidence and it is clear from the evidence tendered by P.W.3 that the accused had premeditated plan to kill the deceased. There is no dispute that the accused has had a string of disputes with the deceased over the sale of the family land. In fact, the accused told this court that he had quarreled with the deceased because he had sold his land without consulting him. I find, in my view, that the accused had malice aforethought and intended to kill the deceased. Even assuming that there was no direct evidence of malice aforethought, this court is entitled to infer under the provisions of **Section 206(a)** of the **Penal Code**, that there was malice aforethought. The postmortem report shows that the deceased suffered multiple injuries inflicted by the accused. It was the intention of the person who inflicted those injuries to cause death or grievous harm to the deceased. Therefore, the element of malice aforethought is established.

In the end, I find the accused guilty of the offence of murder and I convict him. It is now upon him and his legal advisors to make any submissions on mitigation before sentence.

Dated and delivered this 6th day of July 2012.

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J. K. SERGON
JUDGE

In Open Court in the presence of Mr. Ng'ang'a holding brief for Mwangi for the Accused. Miss Maundu for the Director of Public Prosecutions.