



REPUBLIC OF KENYA

High Court at Kitale

Criminal Appeal 62 of 2010

REPUBLIC :::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::: PROSECUTOR.

VERSUS

JOSEPH KARANJA NJENGA ALIAS THEMBA :::::::::::::: ACCUSED.

J U D G M E N T.

Joseph Karanja Njenga alias **Themba** (herein, the accused), is charged with murder contrary to section 203 read with section 204 of the penal code, in that on the 18th April, 2010 at Karara Farm Trans Nzoia County murdered John Njuguna Njoroge.

The case for the prosecution rested on the evidence of ten (10) witnesses who testified that on the material 18th April, 2010 at about 5.00 p.m., the deceased was found lying by the road near the home of the accused. His mother, Gladys Njuguna (PW1), received the information from **Isaac Kareru Murimi (PW4)**, who was attracted by screams from people and ran to the scene where the deceased was lying unconscious and in a state of injury. The deceased was taken to hospital. He regained consciousness on the following day and told his mother (PW7) that he fought and overpowered a person called Kiarie, brother to the accused. Thereafter, the accused appeared and stabbed him (deceased)

On 20th April, 2010, the deceased again told his mother that he was stabbed by the accused for overpowering his brother and on the 4th July, 2010, the deceased died.

After rushing to where the deceased was lying on the material 18th April, 2010, Isaac (PW4) noted that the deceased had several stab injuries on the stomach. He asked the deceased who was his brother, what happened and the deceased told him that he had been stabbed with a knife by the accused.

A sister to the deceased, **Njeri Njuguna (PW2)**, said that on the material date, she was in the company of the deceased drinking “changaa” at the home of the accused. It was the accused who was selling the liquor. After drinking, Njeri (PW2) and the deceased left the place and on their way home, met the accused's brother Kiarie. The deceased and Kiarie argued over a debt of about 200/= owed to the deceased. The argument degenerated into a physical fight in which Kiarie was overpowered by the deceased. The accused rushed to the scene armed with a “panga” (machete). At that juncture, Njeri ran towards her home but turned her head to look behind after running for about 500 metres. She only saw a group of people. She continued running and on arriving home called Isaac (PW4) who informed her that the deceased had been stabbed with a panga.

The father of the deceased, **Charles Njoroge (PW3)**, was informed by phone that the deceased had been stabbed with a knife. He thereafter proceeded to the hospital where the deceased had been

admitted. The deceased underwent an operation and was in hospital upto the day of his death i.e. 4th July, 2010.

Charles (PW3) indicated that the deceased told him that he had been stabbed by the accused and on the 22nd April, 2010, he (PW3) reported the matter to **P.C. Philip Siele (PW5)**, at Kipchogero police base. P.C. Siele referred the deceased's father to the O.C.S. Cherangani Police station even as he continued looking for the suspect nicknamed "**Themba**" who was said to have disappeared from his home.

P.C. Matano Hamisi (PW6), visited the deceased in hospital on 24th April, 2010 and learnt from him that he had been stabbed with a knife from behind by the accused while he (deceased) fought with the accused's brother.

Dr. Blustus Kakundi (PW7), produced a post mortem report compiled and signed by his colleague Dr. Austin Ombija who conducted a post mortem examination on the body of the deceased.

The report indicated that the death of the deceased was caused by severe malnutrition.

P.C. William Kemboi (PW8), of C.I.D Kitale took photographs of the body of the deceased on the 6th July, 2010 at the Kitale District Hospital mortuary and **Cpl. John Maelo (PW9)**, of Cherangani police station witnessed the post mortem examination of the body of the deceased before handing it over for burial.

P.C. Frasto Onyambu (PW10) of C.I.D. Kitale, investigated the matter and charged the accused with the present offence. He (PW10) indicated that the accused was arrested on 15th November, 2010 after being at large for a while.

In his defence, the accused denied the offence and stated that on the material date he met the deceased at a place called Karara where they had been drinking. The deceased was his neighbour and he left him at Karara drinking "changaa" while he (accused) had been drinking "busaa". The accused went to his sister's place and thereafter to Moi's Bridge. He later learnt that there had been a fight and that the deceased was stabbed and taken to hospital. Six months after the incident, in the month of November, he (accused) was arrested.

From the foregoing evidence, it is apparent that the deceased may have been stabbed with a sharp object on the 18th April, 2010 and this occasioned him injury on the abdomen. The person responsible for the injury was suspected to be the accused although none of the witnesses actually saw him in the act of stabbing the deceased. What was certain was the fact that the deceased was injured while engaged in a fight with a brother of the accused called Kiarie who was never called to testify and who could not be ruled out as the person responsible for the injury occasioned to the deceased. The two met after the deceased had left a drinking joint and they quarreled over a debt.

Njeri (PW2), sister to the deceased, was with them but she said that she took off on seeing the accused emerge with a panga. She, however, did not see the deceased being stabbed and by whom.

Other relatives of the deceased, including his mother (PW1), his father (PW3) and his brother (PW4) did not witness the accused stabbing the deceased. They all relied on what they had been allegedly told by the deceased to the effect that he was stabbed by the accused after he had overpowered the accused's brother in a fight.

P.C. Hamisi (PW6) also alluded to having been told by the deceased that he was stabbed by the accused.

The information given to the foregoing witnesses by the deceased implicating the accused would clearly have amounted to vital corroborative evidence of a dying declaration by the deceased if the death of the deceased was caused by stab injuries occasioned to the deceased.

However, there was no medical evidence to prove that death was caused by stab wounds or injury inflicted upon the deceased. Indeed, no link has been established between the death of the deceased and the injuries he suffered. It would not therefore be far-fetched for this court to opine that the injuries inflicted upon the deceased were not fatal as they were not medically linked to his death.

Most important, was the fact that the deceased died three (3) months or so after being injured. He died while undergoing treatment in hospital and the post mortem conducted thereafter clearly revealed that the cause of death was “**severe malnutrition**” which was not linked to the stab injuries suffered by the deceased.

So that, even if it was the accused who stabbed the deceased, he was not responsible for the death of the deceased by his unlawful act. The prosecution has absolutely failed to prove that it was the accused who caused the death of the deceased.

It is rather surprising that the prosecution forged ahead with this case knowing too well, in view of the post mortem report, that they were on a “wild goose chase” or were “shooting in the dark” with the hope of hitting a desired target.

Be that as it may, the accused denied the offence and was vindicated by the post mortem report. In the circumstances, his defence was clearly sustainable.

In the end result, the prosecution failure to prove the charge against the accused translates to the acquittal of the accused in respect thereof. It is accordingly ordered.

[Delivered and signed this 6th day November, 2012.]

J.R. KARANJA.

JUDGE.

6/11/2012.

Before – J.R. Karanja – J.

CC – Ngitira.

Mr. Cherashow for state counsel.

M/s. Arunga for accused.

Accused present.

J.R. KARANJA.

JUDGE.

Court:- Judgment delivered to accused.

J.R. KARANJA.

JUDGE.