



**IN THE COURT OF APPEAL
AT NAKURU
(CORAM: OMOLO, O'KUBASU & VISRAM, JJ.A)
CRIMINAL APPEAL NO. 185 OF 2008**

BETWEEN

GEOFFREY LANGAT APPELLANT

AND

REPUBLIC RESPONDENT

*(An appeal from a conviction and sentence of the High Court of Kenya at Nakuru (Kimaru, J.) dated
1st November, 2007*

in

H. C. Cr. C. No. 48 of 2004)

JUDGMENT OF THE COURT

The appellant, **Geoffrey Langat**, was arraigned before the High Court of Kenya at Nakuru on a charge of murder contrary to **section 203** as read with **section 204** of the Penal Code. The particulars of the offence were as follows:

It was alleged that on 7th February, 2004 at Saosa Village, Olunguruone in Nakuru District within Rift Valley, the appellant murdered Simon Kibii Arap Soi (the deceased).

The appellant, who was charged jointly with his father, Alexander Kubei, pleaded not guilty, and his trial commenced on 23rd May, 2006 before Kimaru, J. Before the commencement of the trial, his father and co-accused passed away in prison. Accordingly, the case against Kubei abated. After a full trial, in which the prosecution called six witnesses, the appellant was convicted and sentenced to death.

The facts that the High Court relied upon are as follows:

At about 9.30 pm on 7th February, 2004, Geoffrey Langat (Geoffrey) (PW 2), then a standard 8 pupil, and a grandson of the deceased, was in his room reading his school work. He heard a knock on the door, and opened the same. It was Geoffrey Langat, the appellant – no relation to him, although they shared the same name. He knew the appellant as a neighbour, and invited him in. The appellant declined, and without saying a word, just left. He was carrying a stick, with nail studs at the end. After a few moments, he heard screams from his grandfather's house, some 15 metres away. He rushed to the grandfather's house, and saw the appellant beating his grandfather with the stick on the latter's head, mouth, chest and legs. He tried to lock the door from outside as he ran calling for help. He informed his mother (Leah) (PW 1), who was in the kitchen, and both screamed for help, attracting the attention of the neighbours, including Josiah Langat (PW 3) who came over to the house. By then the appellant had escaped. Geoffrey and his mother then went over to the deceased, and began administering first-aid treatment, during which

time, Geoffrey asked the deceased why the appellant had attacked him. The deceased simply replied that the appellant just entered the house, and began hitting him with the stick. Late that night, Geoffrey saw and heard the appellant and his father, who lived next door, screaming from across their boundary wall that they had beaten the deceased. The following morning, Geoffrey and his mother Leah took the deceased to the Olenguruone hospital, where he died some three days later. On the way to the hospital, Leah asked the deceased who had beaten him, and the deceased named the appellant's father and co-accused, Kubei.

The post-mortem on the body of the deceased was performed by Dr. Philip Wamaina Kamau who identified the cause of death as cardiopulmonary arrest arising from severe head and chest injury.

PC Edward Mugambi (PW 5) of the Olenguruone Police Station and his team investigated the incident, and charged the appellant and his father of the offence stated before.

In finding the appellant guilty of the offence of murder, the learned Judge relied heavily on the evidence of Geoffrey, and his mother Leah (PW 1). Leah's testimony in the High Court showed that the appellant's father (Kubei) and the deceased had had an acrimonious relationship, arising from a bitter, unresolved, land dispute. On that fateful day, two hours before the alleged incident took place, Kubei came to the deceased's house looking for his son, the appellant. Leah, who was then in the kitchen cooking supper, and who opened the door for him, testified that the deceased was enraged that Kubei had come to his house, and asked him to leave. At that point, a quarrel ensued, and Leah managed to separate the two. However, Kubei left, threatening to harm him for calling him "uncircumcised".

The learned Judge expressed himself, in part, as follows:

"It was while at his house, that the deceased was assaulted and fatally injured. According to PW 2, the 2nd accused had prior to assaulting the deceased, knocked at his house and refused to enter the house. Shortly thereafter, PW 2 heard the deceased screaming. He rushed to his house and saw PW 2 assaulting the deceased with stick with a metal stud at one end. PW 2 testified that he saw the 2nd accused assault the deceased severally over his body. The testimony of PW 1 and PW 2 is however contradictory as to what the deceased said when he regained his consciousness. Whereas PW 1 claimed that the deceased had told her that he had been assaulted by the 1st accused, PW 2 testified that the deceased stated that he had been assaulted by the 2nd accused. This can however be explained by the confusion that occurred during the time after the assault of the deceased. The 2nd accused denied that he was within the vicinity of the homestead of the deceased during the time of the assault. He claimed that he was at his uncle's residence at the time.

The issue for determination is therefore whether the prosecution proved to the required standard of proof beyond reasonable doubt that it was the 2nd accused that participated in the assault of the deceased that led him (the deceased) to sustain fatal injuries. The doctor who examined the body of the deceased after his death was of the opinion that the deceased died due to the injuries that he had sustained during the assault. In the present case, the prosecution also established that there existed a grudge between the family of the deceased and that of the accused. PW 3 testified that he was aware of the existence of a boundary dispute between the family of the deceased and the family of the accused. The difference was made worse when the said families disagreed over animals which had grazed on the other family's parcel of land.

On the material evening, the deceased quarreled with the father of the 2nd accused. According to PW 1, the deceased chased the father of the 2nd accused from her (sic) compound when the father of the 2nd accused came inquiring of the whereabouts of the accused. The father of the 2nd accused (who died before the conclusion of this case) was unhappy that the deceased abused and fought him when he went to his house. It was apparent that he informed the 2nd accused to confront the deceased. The accused went to the house of the deceased, armed with a rungu, and assaulted the deceased causing the deceased to sustain injuries which later proved to be fatal. I believed the testimony of PW 1 and PW 2 as relates the circumstances under which the deceased was assaulted. I particularly assessed the

demeanour of PW 2 when he testified before this court and formed the opinion that he was a truthful witness. His evidence was congruent and consistent. It was not shaken on cross-examination. He clearly explained the circumstances under which he saw the 2nd accused assault the deceased in his house. His evidence was that of an eye witness.

Taking into totality the evidence adduced by the prosecution witnesses, this court reached the conclusion that the prosecution established that it was the accused who assaulted the deceased and thereby caused him to sustain fatal injuries. The accused had the motive to cause harm to the deceased. The deceased had moments earlier to the incident fought with his father. There existed a boundary dispute between the two families. There was a grudge between the two families.

The 2nd accused attacked the deceased in an act of revenge. He had malice aforethought. I therefore hold that the prosecution proved to the required standard of proof beyond reasonable doubt that the 2nd accused killed the deceased with malice aforethought. I considered the defence of the 2nd accused. The said defence was self serving since it did not dent the otherwise strong evidence against the 2nd accused adduced by the prosecution. The assessors who assisted this court during the hearing of this case were of the opinion that the accused was guilty of murder. For the reasons stated above, I agree with them. The 2nd accused is consequently convicted of Murder in accordance with Section 203 as read with Section 204 of the Penal Code.”

Aggrieved by the above decision, the appellant is now before us in this first, and possibly final, appeal. He has outlined seven grounds, as follows:

- “1. THAT the learned trial judge erred in law in convicting me the appellant in the instant case yet failed to observe that the prosecution side did not adduce sufficient evidence to secure a conviction against me.*
- 2. THAT the learned trial judge erred in law when he convicted me the appellant while relying on the evidence of purported identification by a single witness yet failed to observe that the purported identification was not free from possibility of error or mistake having been made under hard and difficult circumstances.*
- 3. THAT the learned trial judge erred in law in convicting me the appellant in the instant case yet failed to note that I was a victim of circumstances events (sic) arising from the differences by co-accused (father) and the deceased due to the dispute that existed between the two.*
- 4. THAT the learned trial judge erred in law in convicting me the appellant in the instant case without observing that the case suffers lack of essential witnesses and material exhibits to be regarded proved beyond shred of doubt.*
- 5. THAT the learned trial judge erred in law when he rejected my defence without giving cogent reasons for its rejection thus violated the provisions of section 169 (i) of the cpc.*
- 6. THAT since I can not recall all that transpired during the trial, I pray humbly in advance that the honourable court shall allow me raise and adduce more relevant grounds during the time of appeal hearing.*
- 7. THAT I pray to be served with a copy of the trial record to enable me raise more relevant grounds to be presented at the appeal hearing and also pray to be present at the appeal hearing.”*

In his submissions before us, Ms. Nyawira Mureithi, learned counsel for the appellant, confined herself to three important issues – identification, appellant’s alibi defence, and contradiction between Geoffrey and Leah on the “declaration” made by the deceased regarding his killer. With regard to identification evidence, Ms. Mureithi submitted that the only direct evidence against the appellant was that of Geoffrey, a Standard 8 pupil, and that the other evidence was circumstantial. Relying on the cases of Abdalla Bin Wendo & Another vs R [1953] 20 E.A.C.A 166 and Stephen Kibutha M’wongo & Another vs Republic [2011] Eklr Ms. Mureithi argued that Geoffrey could have been honest, but mistaken, in his recognition of the appellant as the killer of the deceased. Counsel further argued that the appellant’s alibi defence that he was elsewhere at the time of the incident had not been taken into account by the learned Judge. And finally, counsel submitted that the deceased contradicted himself when he told Leah that Kubei killed him, while he told Geoffrey that the appellant killed him.

On his part, Mr Omutelema, Senior Principal State Counsel, submitted that the evidence against the appellant was overwhelming, notwithstanding the minor contradiction pointed out by counsel for the appellant.

As this is a first appeal, it is our duty to re-evaluate and analyze the evidence and make our own independent conclusion on that evidence. (see *Okeno vs R [1972] EA 32*).

As the learned Judge found, the combined evidence of Leah and Geoffrey is very compelling, and leaves no doubt in our minds that it points to the guilt of the appellant, beyond any reasonable doubt. Leah testified that at about 7.30 p.m. on that fateful day of 7th February, 2004, Kubei came to the deceased's house looking for his son, the appellant. The deceased and Kubei had a history of acrimony arising from a bitter and unresolved boundary dispute. An altercation took place, resulting almost in a physical fight, averted only by Leah's intervention. Some nasty words were exchanged, when the deceased called Kubei "uncircumcised", and Kubei retaliated by saying he would harm the deceased. Almost two hours later, Kubei's son, the appellant arrives with a stick; Geoffrey opens the door and invites him in; the appellant leaves without saying anything; then moments later Geoffrey hears screams; dashes to his grandfather's house, some 15 metres away, and actually witnesses the appellant beat up the deceased.

This evidence is conclusive, given also the totality of evidence, including the history of an acrimonious relationship between the two families, and the deceased's declaration that it was the appellant who attacked him. The contradiction referred to by counsel is not material, in our view. On the first occasion, immediately after the attack, the deceased said, in the presence of both Leah and Geoffrey, that the appellant attacked him. Then, later, the following day, he told Leah that Kubei attacked him. Kubei was the one who threatened him with harm, and the appellant (his son) executed that harm. Clearly both those issues were playing on his mind at the time, and the learned Judge's conclusion that this was as a result of "confusion" cannot be faulted. In any event, the learned Judge did not rely on "dying declaration" as the basis of conviction in this case. It was the direct, and circumstantial evidence that led to the conclusion of guilt. The direct evidence was that of a person (Geoffrey) who knew the appellant as his neighbour – it was, therefore, a case of identification by recognition. The circumstantial evidence was the conduct of the appellant's father before the incident, and the history of acrimony between the two families.

Finally, with regard to the complaint that the appellant's defence was not considered by the trial Judge, we find no merit in the same. Indeed it was considered, and correctly rejected.

For the foregoing reasons, we find that there is no merit in this appeal and dismiss the same.

Dated and delivered at Nakuru this 23rd day of February, 2012.

R. S. C. OMOLO

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JUDGE OF APPEAL

E. O. O'KUBASU

.....
JUDGE OF APPEAL

ALNASHIR VISRAM

.....
JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR