



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CRIMINAL CASE. NO.50 OF 2015

REPUBLIC.....PROSECUTION

VERSUS

PATRICK WANJALA MUKHWANA.....ACCUSED

JUDGMENT

PATRICK WANJALA MUKHWANA is charged with the *offence of murder Contrary to Section 203 as read with Section 204 of the Penal Code.*

The particulars of this offence are that on the 2nd day of June, 2015 at Musembe Village, Ngenyilel Location, in Eldoret West District within Uasin-Gishu County, the accused murdered Peter Wafula.

The Prosecution case is that on 1st July, 2015 at about 10:30pm PW1 and PW2, who are a wife and a husband respectively, were asleep in their home at Musembe. The deceased is a father to PW2 and was living in the same farm with them but about 100metres away. PW1 was then called by a tenant of the deceased in this case who informed her that there were people who were harvesting sugarcanes in their land. PW1 and PW2 has 2acres of sugarcane farm at the place. PW1 woke up PW2 and passed to him the message. PW2 was unwell and was not of much help. PW1 then woke their employee by the name of Ibrahim Issa. They stood outside the house and heard sounds of pangas cutting sugarcanes. PW1 rang the deceased and reported to him about the incident. The deceased said he'll join them. PW1 then instructed Ibrahim Issa to prepare as when the deceased joins them they will all proceed to the sugarcane farm. They however waited for arrival of the deceased but in vain. After 15minutes of wait PW1 suggested he could have used another route and decided to check on him. On the way they heard sounds of the pangas felling maize plants in a farm adjacent to the sugarcane farm. The maize crop was not ready for harvesting. They proceeded on, and near the gate they heard some commotions in the farm. They thought the deceased had already arrived and was engaging the assailants. They rushed to boost the effort. Suddenly a person emerged from the bush pulling a bicycle, and appeared to be on the run. PW1 told Ibrahim Issa to get hold of him. Ibrahim Issa blocked his way by standing in front of him. The assailant, who was armed with a panga abandoned the bicycle and run away. Ibrahim Issa pursued him. PW1 was screaming for help as the two engaged. About 100metres ahead, the assailants turned against Ibrahim Issa.

PW3 who's their neighbor heard noises along the road at about 11:00pm. He went outside the house armed with a slasher. He saw three men following PW1. He got into the home compound. The three had pangas and he challenged them. They engaged in a fight. He was cut on the right small finger and the left lower arm. He managed to cut one of the assailants who fell down. The rest run into the maze farm. He pursued them but they escaped. When he returned back he did not find the one he had cut. He went for treatment. He did not identify or recognize the assailants.

When PW3 was attacked and informed PW1 and PW2, the two got scared. PW1 urged Ibrahim Issa to pick the bicycle and return

home. PW1 then followed on the deceased using calls. She called the mother in-law who said he left when PW1 called him. She tried to call on his phone but he was not picking the calls. She called the mother in-law at 12:30am and she said he had not returned home. At 1:00am they still had not seen him. PW1 asked the mother in-law to send workers to search for him. She as well called PW2 to join workers for a search. They took different directions as they carried out a search in the farm. PW1 saw one of the searchers raising his hand. She called the rest and went to the place. They found the deceased who had cuts all over the head. She called an in-law by the name of Bernard to avail a vehicle to rush him to the hospital. The vehicle was availed and PW2 and some others rushed him to Eldoret Hospital. Upon arrival he was pronounced dead.

At 6:00am they proceeded to the scene. They found one brown shoe and a marvin woven hat. They recognized them to belong to an employee of PW1 and PW2, one Patrick Wanjala, who had been sacked about two years ago due to theft. He had also worked for them for about two years. PW4, the village elder collected the marvin woven hat and the shoe.

On 2nd July, 2015 at about 2:00pm PW4 was called by an informer from Chekalini. He reported that there was a patient there who had cut wounds. PW4 rushed to the place and found the alleged patient being treated. He was Patrick Wanjala a former employee of the deceased person.

PW1 and PW2 were mostly away from their rural home and it's the deceased who was taking care of their home and the employee, the accused in this case. PW4 called the Police and he was picked.

PW5 and Sergeant Oruti investigated the case. They visited the scene and noted about an acre of maize crops had been destroyed. They also together with some other officers namely P.C Ouma and P.C Mutai proceeded to Chekalini Dispensary where the suspect had been locked for safety from irate villagers wanted to lynch him. He had treated injuries on the right palm and forehead.

On 3rd July, 2015 post mortem on the body of the deceased was conducted by PW6 at Moi Teaching and Referral Hospital in Eldoret mortuary. The deceased had deep cut wounds on the skull. They had penetrated to the brain. The ear had a horizontal cut wound of 8x2cm. The left parietal frontal had a cut wound measuring 12cm and another cut in the same area measured 6cm. There was still another on the same side measuring 12cm. There were two cuts on the right side of the sculp each measuring 12cm. The left shoulder had a cut wound of 10cm. There was still another on the left side of the back. The right leg had a cut wound measuring 7cm long, which had gone through the bone.

When the skull was opened there was bleeding in the brain. The pathologist opined that the cause of death was due to severe head injury, due to multiple cut wounds. He thus filled the post mortem report.

The accused was then charged with the offence.

The navy blue marvin hat, one right leg brown shoe, a bicycle and post mortem report were all produced as exhibits.

The accused in his defence stated that he was an employee of PW1 and PW2. He worked for them for more than 3.5 years. The two never used to pay him. They were working far from the place and had promised to buy him a parcel of land at the place. PW2 was later sacked from employment. PW1 who's a teacher was transferred home and the two lived together. They tried to find a way of sacking the accused without pay. He was sacked and went to Lugari. He then realized after three months he could hardly survive.

He decided to go to PW1 and PW2 to seek for his pay at least to invest in farming. When he went he was told to stay next to the fence. They deliberated and said they had not organized for his pay. He pleaded to be given whatever they could manage then. PW2 used to walk while armed with a panga. He ordered the accused to leave, saying they were through with him. The accused resisted, pleading for pay. George (PW2) realized he could be a problem to him and cut him on the shoulder. The accused fell down. When he rose he tried to escape. He was cut on the head. He used the left hand to parry subsequent attacks. He snatched the panga from PW2 and cut him on the head. He then threw the panga and left. He went upto Lugari. Good Samaritans noted he was injured and took him for treatment. He was treated for two days. Police officers picked him on allegation that he had killed. Its then he knew Peter Wafula had died. Peter Wafula was the aggressor. He was alone at the place and it was at 6:00pm. He had no intentions to kill but did it in self defence. George is a son of the deceased and the incident was in George's home.

At this point, the court will determine as to whether the offence against the accused is proved by the Prosecution beyond reasonable doubt.

For an offence of murder, the ingredients the Prosecution need establish beyond reasonable doubt are as were established in the case of **NYAMBURA AND OTHER Vs. R. {2001}KLR 355** which are;

- a. The death of the deceased and the cause of that death
- b. The accused committed the unlawful act which caused the death of the deceased; and
- c. That the accused had harboured malice aforethought.

The death of the deceased, one Peter Wafula is not in dispute. Several Prosecution witnesses witnessed his injuries and death, and the postmortem report by the pathologist seals it all. The defence does not also dispute the death.

On whether it's the accused person who committed the unlawful act which led to his death, is where the dispute lies. The issue is not as to involvement of the accused person in his death, but whether the said acts by him which led to his death were unlawful and he had malice aforethought.

The Prosecution case reveals, and convincingly, that the accused together with two others had gone on one material night to PW1 and PW2's parcel of land to destroy maize crop. When they were confronted by the deceased and also PW1, PW3 and another Ibrahim Issa, they attacked them with pangas. PW3 though injured survived but the deceased herein did not. The accused was as well attacked and injured by PW3 but was lucky to have survive.

The persons who had the legal right to fight and defend their property and lives are PW1 and PW2. PW3 also acted in self defence when he attacked the accused. The defence by the accused person is unrealistic and an afterthought. He never brought it forth during cross examinations of the witnesses. He alleges the person who attacked him and he defended himself against was PW2; however, the deceased is a different person, the father of PW2. His defence is just a crafted story.

The injuries on the body of the deceased as were revealed by PW6 discloses an attacker who intended to kill. There were many fatal cut wounds. One was deep and penetrated into the skull, while another to the right leg penetrated to the bone. There were about seven serious cut wounds. Some must have been inflicted when the deceased was down and of no danger to anyone. Self defence cannot therefore avail as a defence to the accused. It's simply a sham. The defence is therefore dismissed.

The upshot is that the offence of murder against the accused is proved by the Prosecution beyond reasonable doubt and the accused is convicted of the same.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 17TH DAY OF MARCH, 2022

JUSTICE S.M GITHINJI

JUDGE HIGH COURT AT ELDORET

In the presence of;

Mr. Miyienda holding brief for Ms. Karuga for the accused person...

Accused person

Ms. Limo for the state.....

JUSTICE S.M GITHINJI

JUDGE HIGH COURT AT ELDORET

Prosecution:

We have no previous criminal record. We however request for a serious sentence. The deceased was injured and killed in his farm as he prevented the accused and others from destroying maize crop.

Mr. Miyianda:

I pray for a lenient sentence against the accused person. He's aged 61 years. He has a family who have been left in hands of other people.

Given the circumstances of the case we pray for a non-custodial sentence. He can be allowed a second chance to rehabilitate himself and reform.

The period spent in remand in excess of 7 years from the year 2015 can be weighed. I plead for a pre-sentence report if necessary, to assess victim impact. The term served in remand is sufficient for the offence.

COURT:

I have considered the circumstances of the offence, period spent in remand which is in excess of 6 years and the stated mitigation. Murder is a serious offence which attracts a maximum of death sentence. However, weighing the mitigation factors, I do find a sentence of 8 years imprisonment sufficient. The accused will serve 8 years imprisonment.

Right of appeal 14 days.

JUSTICE S.M GITHINJI

JUDGE HIGH COURT AT ELDORET

17.03.2022



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