



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Wanyeki (Criminal Case 15 of 2019)
[2024] KEHC 14906 (KLR) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14906 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 15 OF 2019
JM NANG'EA, J
NOVEMBER 28, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

DOUGLAS NDEGWA WANYEKI ACCUSED

RULING

1. The accused person was charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence state that on 18/2/2018 at Menengai Crater area, Nakuru North Sub County, within Nakuru County, he murdered Patrick Muchiri Githaiga. He denied the charge.
2. The prosecution case is that on the material date at about 6:00p.m. PW1, the deceased's brother, was informed by his neighbour that the deceased had been stabbed and seriously injured. PW1 rushed to the scene but found out that his brother had been taken to Nakuru County Referral Hospital. He proceeded to the hospital where he learnt that the deceased had been admitted and receiving blood transfusion. PW1 noticed that he had a cut wound to the stomach. He was taken into theatre for operation.
3. PW1 reported the incident to Bahati Police Station and recorded a statement. About 12 days later the deceased was discharged from hospital. He was, however, very weak and unable to eat or support himself. PW1 further testified that the deceased told him 3 days after leaving the hospital theatre that the accused had given him shoes to mend and they disagreed over his payment. According to the investigating officer (PW4) the deceased identified the accused as the assailant and was arrested and charged in Nakuru Chief Magistrate's Court's file No. 920 of 2018 over the assault. Unfortunately the deceased died on 12/2/2019 while receiving treatment in hospital. The witness tendered the proceedings of the assault, charge preferred in the lower court.



4. According to PW1, The pathologist who carried out autopsy on the deceased's body (PW2) testified that the deceased was emaciated due to poor nutrition status. Sores were on the shoulders and buttocks. 75% of the intestines were missing the doctor opined that the "cause of death was chronic malnutrition with anaemia and infection from sores and injuries to the guts as a result of sharp trauma to the abdomen." According to the doctor, the primary cause of death was the stab wounds to the stomach.
5. PW3 is a Clinical Officer who attended to the deceased at the Nakuru County Referral Hospital. His medical findings are similar to those observed by PW2.
6. The exhibited proceedings of the lower court show that the deceased testified on 23/7/2018. He told the court that on 18/2/2018 at 2:00p.m. the accused asked him to repair shoes for him and his children. After finishing the job, the accused allegedly suggested that he accompany him to the local Shopping Centre so that he could be paid Kshs. 180/= for his services. Along the way, the accused entered a house belonging to one Paul and later told the deceased he was, after all, not going to the Trading Centre. When the deceased asked for his payment, the accused is said to have entered into the same house and emerged with a knife with which he threatened to stab the deceased. He did make good the threat and allegedly stabbed the deceased in the stomach rendering him unconscious, and he only came to the following day in hospital.
7. No other witness testified in the Magistrate's Court. After this murder charge was laid against the accused, the charge before the lower court was withdrawn pursuant to the provisions of Section 87(a) of the Criminal Procedure Code.
8. The defence Counsel made submissions on "no case to answer" upon the close of the prosecution evidence. It is contended inter alia that the essential ingredient of the offence of murder to wit; malice afterthought was not established. Counsel further point out that there was no eye witness to the alleged attack and that the prosecution is only relying on circumstantial evidence. Reliance is placed on Republic vs Johathan Gitari M'Mithiaru [2014] eKLR which involved circumstantial evidence which the court found to be weak in that case.
9. The prosecution didn't reply to the defence submissions.
10. I have considered the prosecution evidence and the defence submissions against the charge facing the accused person. The burden on the prosecution at this stage is to prove that a prima facie case has been made out for the accused to be put on his defence. A prima facie case has long been defined in the favour of Ramanlal T. Bhatt vs Republic [1957] EA 332 as "one on which a reasonable tribunal, properly directing itself, its mind to the law and the evidence could convict if no explanation is given by the defence.". This does not mean that the court must in every case, be prepared to convict if no evidence is offered by the accused. The court's decision depends on the particular circumstances of a case taking into account the accused's constitutional and legal right to remain silent and not adduce any evidence since the burden is on the prosecution to prove a charge to the required legal standard.
11. Where the court concludes that a prima facie case has been established, it is not advisable to give reasons for the decision (See Case law in Festo Wandera vs Republic [1980] KLR 103 among other judicial determinations. The reason is obviously so that an impression is not created that the court has already made up its mind before a defence is given.
12. The deceased implicated the accused alleging that he stabbed him in the abdomen using a knife. Medical evidence presented opines that he sustained stab wounds to the stomach said to be the primary cause of death. The evidence further indicates that the deceased knew each other well as villagers. In a proper case, the evidence of one witness may be sufficient to convict.



13. Without saying more at this stage, I am of the opinion that the prosecution discharged its duty of making out a prima facie case. The accused is accordingly put on his defence to the charge.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 28TH DAY OF NOVEMBER, 2024.

J. M. NANG'EA , JUDGE.

In the presence of:

The state, Ms Sang

The Advocate for the accused, present

The Accused, present

Court Assistant, Lepikas

J. M. NANG'EA, JUDGE.

