



**Republic v Mbarak & another (Criminal Case 16 of 2018)
[2023] KEHC 22185 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 22185 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE 16 OF 2018**

**A. ONG'INJO, J
JULY 27, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

NAIM MOHAMED MBARAK 1ST ACCUSED

IBRAHIM ISMAEL HASSAN 2ND ACCUSED

RULING

1. The accused persons Naim Mohamed Mbarak and Ibrahim Ismael Hassan alias Ibra are charged with the offence of murder contrary to Section 203 as read with Section 204 of the [penal code](#).
2. Particulars are that the accused persons on the 15th day of April 2018 at Mtopanga area, Kisauni Sub-County of Mombasa County jointly with others not before the court murdered Gilbert Ogoro Odhiambo. PW 1 – Dr Mohammed of Coast General Hospital produced postmortem report carried out by Dr Salim on March 16, 2018 in which cause of death was established as haemorrhagic shock Secondary to Multiple deep cut wounds with massive left sided haemothorax and haemoperitonium.
3. PW 2 CPL Kadir Sharamo the Investigating Officer visited scene of murder in Mtopanga and found the body had been removed to the Coast General Hospital Mortuary. He said his investigation established that a gang of men armed with pangas and sticks invaded mnazi club of Paul Nyoro on a revenge mission and injured the patrons who included the deceased and he succumbed to the injuries on the way to the hospital.
4. PW 2 said the OCS arrested 4 suspects on the material night and instructed him to do thorough investigations. That Chief Inspector Sasati conducted ID parade where 2 persons were positively identified by Paul Nyoro the Mnazi Club Owner.



5. PW 2 recorded statements of Paul Nyoro and one Marium Chizi an attendant at the club. PW 2 also recorded statements of Jackline Nabwire the wife of the deceased, Victoria Katilo a resident of Mtopanga and Twalib Kassim all of whom he said he was unable to trace to attend court and testify. There were a total of 8 witnesses including 2 police officers being the OCS who arrested 4 suspects and after ID parade accused persons herein were charged.
6. There was also the officer who conducted ID parade. If it is true that the Investigating Officer was unable to trace the witnesses which this court does not believe then it cannot be true that he was unable to call the OCS to testify and explain to the court how and why he arrested the 4 suspects on the material day. In the absence of the 6 civilian witnesses to testify and explain how the deceased met his death and confirm that the accused persons herein were the perpetrators. This court finds that there is completely no evidence upon which the accused persons may be placed on their defence. They are therefore acquitted under Section 306 (2) of the Criminal Procedure Code.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 27TH DAY OF JULY 2023

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of:-

Ogwel - Court assistant

Mr. Ngiri for state

A1 - Present in person

A2 - Present in person – in remand

Mr. Chacha Advocate for A1

Mr. Aboubakar Advocate for A2 – Mr. Chacha hold brief

Hon. Lady Justice A. Ong'injo J

27/07/2023

Court:

Copy of ruling to be supplied to Prosecution.

Hon. Lady Justice A. Ong'injo J

27/07/2023

