



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CRIMINAL CASE NO. 30 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**CHARLES KARIUKI MUNGAI.....ACCUSED**

**RULING**

1. The accused is charged with *murder* contrary to section 203 as read with section 204 of the **Penal Code**.
2. The particulars are that on 20<sup>th</sup> October 2014 at Ndiri-ini Village, Gaichanjiru Location, Kandara Sub-County within Murang'a County jointly with others not before the court murdered *Stephen Ngichira Gatonga* (hereafter *the deceased*)
3. He pleaded not guilty. The Republic called *three* witnesses. The question now is whether their evidence raises a *prima facie* case.
4. PW1 was Solomon Njuguna Ngugi, the proprietor of an establishment styled *Ndiri-Ini Bar* located at Ndiri-Ini Market. On 20<sup>th</sup> October 2014, at about 20:40 hours, he saw the accused and the deceased enter the bar. He knew both of them. The pair sat together at a table and shared a drink branded *identity* and priced at Kshs 50. The two then exited the bar after about 20 minutes. He could not recall the way they were dressed.
5. When he opened the business the following morning, he found a crowd milling around a body. He learnt that it was that of the deceased.
6. PW2 was Samuel Murigi, a son of the deceased. On 20<sup>th</sup> October 2014, he travelled from Mwingi arriving at his father's home at Gaichanjiru at about 22.00 hours. He found his mother, Phelista Wairimu, at home. She informed him that the deceased had gone out to drink. The deceased never returned home.
7. Early the following morning, he was summoned by his mother to the shops where he saw the body of the deceased. It was half naked and draped in partly in a coat. He used his mother's *lesso* to cover the body. He then reported the matter to Kagaa Police Post. The police came and removed the remains to the mortuary.
8. PW3 was Police Constable Munene Gwatia. He and PC Edward Kariuki visited the scene. Beside the body were red plastic slippers and a black short-sleeved jacket which members of the public said belonged to the accused (exhibits 1 and 2).
9. He said the body had a blunt injury to the back of the head near the right ear; the skin was broken and some blood had oozed out. The witness produced the post mortem report by Dr. Francis Ngugi under section 77 of the **Evidence Act** and there being no objection by the defence (exhibit 3). The autopsy was conducted at Gaichanjiru Catholic Hospital on 31<sup>st</sup> October 2014.
10. On 7<sup>th</sup> February 2022, learned prosecution counsel, *Ms. A. Gakumu*, informed the court that she was not calling other witnesses and closed her case.
11. Learned counsel for the accused, *Mr. J. Mbutia*, filed brief submissions on 8<sup>th</sup> March 2022. The Republic opted *not* to file any submissions.
12. I am now called to determine whether the evidence discloses a *prima facie* case sufficient to place the accused on his defence.
13. Section 203 of the **Penal Code** provides that *any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder*.
14. There are three key ingredients that *must* be present in the offence of murder: first, the prosecution must prove beyond reasonable doubt

the *death* of the deceased and the *cause* of that death; secondly, that the accused *committed* the unlawful act that led to the death; and, thirdly, that the accused was of *malice aforethought*. Malice aforethought is the *mens rea* or the *intention* to kill another person.

15. There is absolutely *no* doubt about the *death* of the deceased. PW1, PW2 and PW3 all saw the remains. Doubt is completely erased by the post mortem form (exhibit 3).

16. The body had a blunt injury to the back of the head near the right ear; the skin was broken and some blood had oozed out. According to the pathologist, the cause of death was “*excessive internal bleeding into the abdominal and chest cavity following blunt external trauma*”

17. From that evidence, I readily find that the death was *unlawful*.

18. However, there was no *eye witness* to the murder. The entire case for the prosecution is built atop *circumstantial evidence*. In **R v Kipkering arap Koske & another** 16 EACA 135 (1949) the court held-

*In order to justify the inference of guilt, the inculpatory fact must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt*

19. The incriminating evidence in this case is from PW3. He was told by the members of the public that a torn pair of red plastic slippers and a black short-sleeved jacket found besides the body belonged to the accused. The informer was not called to the stand. As it is now, that evidence constitutes *hearsay*. Moreover, it does not by itself form a concrete link between the accused and the attack on the deceased.

20. True, the accused and the deceased had been seen by PW1 sharing a drink. But the witness said that the two appeared friendly and left the bar together after about twenty minutes. And whereas the accused was the last to be seen with the deceased, there is no further evidence of their movements outside the bar. In a synopsis, it leaves wide open other *explanations and reasonable hypothesis* of the cause of death.

21. In a criminal trial, the *standard of proof* is beyond any reasonable doubt. As things now stand, there is no reliable evidence *proving* that the accused killed the deceased or pointing to *malice aforethought*. Paraphrased, there is no evidence to *convict* if the accused opts to *keep silent*.

22. The law on that subject was succinctly captured in **Bhatt v Republic** [1957] E.A. 332 at 334-

*It may not be easy to define what is meant by a ‘prima facie case’, but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.* [underlining added]

23. From my analysis of the evidence and the legal authorities, I am not persuaded that the Republic has proved a *prima facie* case against the accused *sufficient* to place him on his defence.

24. Accordingly, under the provisions of section 306 (1) of the **Criminal Procedure Code**, I enter a finding of *not guilty*. The accused is hereby *acquitted*.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT MURANG’A THIS 31ST DAY OF MARCH 2022.**

**KANYI KIMONDO**

**JUDGE**

**Ruling read in open court in the presence of-**

Accused person.

Mr. Mbuthia for the accused instructed by J. N. Mbuthia & Company Advocates.

Ms. Muriu for the Republic instructed by the Office of the Director of Public Prosecutions.

Ms. Susan Waiganjo, Court Assistant.