



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

(CORAM: CHERERE-J)

CRIMINAL CASE NO. 10 OF 2020

BETWEEN

REPUBLICPROSECUTOR

VERSUS

GEREVASIO MWENDA SIMEON.....ACCUSED

RULING

1. **GEREVASIO MWENDA SIMEON (Accused)** is charged with Murder Contrary to Section 203 as read with Section 204 of the Penal Code.

The particulars of the charge are that on 21st January, 2020 at Makutano Township in Imenti North sub- county within Meru County murdered KELVIN MWITI alias KIBAKI.

2. Accused denied committing the offence and the prosecution called a total of six (6) witnesses in support of their case. Upon the prosecution closing its case this court has to determine whether or not the prosecution has established a prima facie case against the accused as defined in the case **Ramanlal Trambaklal Bhatt vs Rex [1957] EA 332, 335.**

3. **PW3 Milka Mwende** stated that on the material night, deceased, accused and another left her bar and she later found the deceased lying outside with stab wounds. **PW4 Everlyne Mweni** saw Accused, deceased another on the material night and later learnt that deceased been stabbed. **PW5 Harriet Karendi** received information that some people were fighting outside the bar and did not see them. She later learnt that a man had been stabbed to death. **PW1 PC Ambrose Korir** finding deceased injured escorted him to hospital where he died. **PW2 Kenneth Mworira**, deceased's niece did not know how deceased met his death. He identified deceased's body to the doctor that conducted the postmortem. The postmortem report **PEXH. 1** reveals that deceased died of exsanguination following multiple stab wounds. **PW6 CPL Peter Obal** the investigating officer confirmed in cross-examination that none of the prosecution witnesses implicated Accused in the murder.

4. Having considered the evidence tendered by the 6 prosecution witnesses, it is revealed that none of the prosecution witnesses observed the commission of the offence.

5. The evidence on record reveals that the only reason that Accused was charged was that he was with the deceased on the night of the murder. There is therefore no doubt that Accused was charged on the basis of suspicion. In **Sawe vs. Rep [2003] KLR 364** the Court of Appeal held:

“Suspicion, however strong, cannot provide the basis of inferring guilt which must be proved by evidence beyond reasonable doubt.”

6. In **R. vs. Kipkering Arap Koske & Another [1949] 16 EACA 135**, the Court of Appeal for Eastern Africa had this to say:

“In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt. The burden of proving facts which justify the drawing of this inference from the facts to the exclusion of any reasonable hypothesis of innocence is on the prosecution, and always remains with the prosecution. It is a burden which never shifts to the party accused.”

7. From the foregoing, I find that the prosecution has failed to demonstrate that Accused murdered or took part in the murder of the deceased and it would be futile to ask him to defend himself for even if he chooses to remain silent, the evidence on record is insufficient to

sustain a conviction.

8. Accordingly, Accused is found **NOT GUILTY** of the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code and is hereby set at liberty unless otherwise lawfully held.

DATED THIS 30TH DAY OF MARCH 2022

WAMAE. T. W. CHERERE

JUDGE

COURT ASSISTANT - KINOTI

ACCUSED - PRESENT

FOR THE ACCUSED PERSONS - MR. MURIIRA ADVOCATE

FOR THE STATE - MS. MWANIKI