



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL CASE NO. 19 OF 2020

REPUBLIC.....PROSECUTOR

VERSUS

SIMON NDUNG'U WAINAINA.....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 19th August 2020 at Rokoroi village, Gatanga Sub-County within Murang'a County, he murdered *Dennis Wanjiri Mbugua*.
3. He pleaded *not guilty*. The prosecution lined up *ten* witnesses.
4. The issue is whether the evidence discloses a *prima facie* case sufficient to place the accused on his defence.
5. The learned prosecution counsel, *Ms. A. Gakumu*, filed submissions on 7th March 2022 with a list of authorities. In her opinion, the collective evidence of the ten witnesses is overwhelming and calls for a rebuttal from the accused.
6. Leaned defence counsel, *Mr. T. Kariuki*, has a contrary view. In his detailed submissions filed on 21st February 2022, he argued that there is no *direct* or reliable *circumstantial* evidence connecting the accused to the offence. He submitted that element of *malice aforethought* is completely absent. In a synopsis, he implored me to acquit the accused at this stage.
7. The accused and the deceased were *cousins*. They were also friends. According to their *grandmother*, *Mary Nyambura* (PW1), she was out gathering cattle feed on the morning of 19th September 2020. She then heard a distress call from her *granddaughter*, *Mary Waringa* (PW2). The latter was calling out loudly. When PW1 went to the road, she found the deceased bleeding in the stomach area.
8. According to *Waringa* (PW2), she was on her way to the shops. She found the accused and the deceased standing on the road. The accused asked her whether he could join her. When they reached where the deceased was, she saw the two greet each other with "a fist-bump" or in her lingo, *kungoteana*.
9. She went on for about 8 metres when she "heard someone fall down. It was *Denis [deceased]*. *Ndung'u [accused]* had a knife". She testified that the deceased was "stabbed above the stomach".
10. There is then the evidence of *Dr. John Mathaiya* (PW9). According to the pathologist death resulted from "chest injury due to a single penetrating sharp force trauma to the chest".
11. Applying the precedents in *Bhatt v Republic* [1957] E.A. 332 and *R v Kipkering arap Koske & another* 16 EACA 135 (1949); and, upon the digest of the evidence of *all the ten* witnesses, I find that the Republic has established a *prima facie* case against the accused.
12. Accordingly, under the provisions of section 306 (2) of the **Criminal Procedure Code**, I place the accused on his defence.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 29TH DAY OF MARCH 2022.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of:

Accused person.

Mr. Waiganjo holding brief for Mr. Kariuki for the accused instructed by Tim Kariuki & Company Advocates.

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

Ms. Susan Waiganjo, Court Assistant.