

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL CASE NO. 7 OF 2016

REPUBLIC

VERSUS

ANTHONY MUTISYA KIOKO.....ACCUSED

RULING

1. The accused was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code; he was accused of having murdered Naomi Gakenia Kahoro on the 4th July, 2016 at Kabendera Village in Nyeri County;
2. On the 28th July, 2016 the accused entered a plea of Not Guilty; and the hearing of the matter commenced on the 16/1/2018 and at the hearing hereof the accused was at all times represented by Learned Counsel Mr. Nderi whereas Ms. Gicheha was the Prosecuting Counsel for the State;
3. The prosecution called a total of ten (10) witnesses in support of its case; at the close of the prosecution case defence counsel was invited to make submissions as to whether the prosecution had made out a case that required the accused person to be called upon to defend himself;
4. Counsel for the accused submitted that the best evidence the prosecution had was based on the doctrine of recent possession; the items as listed in the two inventories were indeed found in the house where the accused resided but the evidence of the Investigating Officer (**PW10**) was that he was unable to ascertain whether the accused was the owner of the house;
5. Even if the items were found to belong to the deceased there was no proof of possession by the accused person; the issue of linking the accused with the commission of the crime is based on conjecture; that it is trite law that it is not upon the accused to fill in the gaps left by the prosecution;
6. Counsel urged the court to be guided by the philosophy that if the accused remained silent there was no credible or compelling evidence that the court could use to convict the accused; and urged the court to acquit the accused.
7. In response Prosecuting Counsel for the State submitted that the accused was a former employee of the deceased and had been fired a few days prior to the incident; that he had every intention to commit the offence as he was on a revenge mission due to having been fired;
8. The State relied on the evidence adduced by the prosecution on the several items listed in the Inventory (**PExh.12**) that were recovered in possession of the accused a few days after the commission of the crime; evidence was tendered the items belonged to the deceased; and that it was not disputed that the accused was an occupant of the house in which the items were recovered; prosecution tendered sufficient evidence and prayed that the accused be put on his defence;
9. In the rejoinder counsel for the accused submitted that there was no evidence adduced that the accused had been sacked from employment; as for the house where the items were recovered counsel reiterated that the accused did not have exclusive residence; that it was not a case of robbery and that even if the items were unlawfully in the accused's custody this did not link him to the commission of the offence of murder.

10. After hearing the rival oral submissions made by both counsel and having evaluated all the evidence on record on the four key elements of the offence that needed to be proved by the state; the key elements being that the deceased died; the cause of death; that the accused committed the unlawful act or their acts of omission led to the death of the deceased; and lastly whether the accused had malice aforethought; refer to the case of **Antony Ndegwa vs Republic (2014) eKLR**; it is this court's finding that the prosecution evidence adduced circumstantial evidence on the items that belonged to the deceased that were recovered in the house where the accused was an occupant;

11. This court is satisfied that there is a scintilla of evidence that links the accused to the commission of the offence and that the prosecution has established a prima facie case against the accused that warrants him being placed on his defence to answer to the charges; refer to the renowned case of **Bhatt vs Republic (1957)**;

12. The accused is found to have a case to answer; his rights and options will be put to him for election before he presents his defence.

Orders Accordingly.

Dated, Signed and Delivered at Nyeri this 5th day of January, 2020.

HON.A.MSHILA

JUDGE