



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NUMBER 62 OF 2015

REPUBLIC.....PROSECUTOR

-VERSUS-

WESLEY KIPKURUI RONO.....ACCUSED

RULING (ON CASE TO ANSWER)

(1) The accused person Wesley Kipkurui Rono was charged with the offence of **Murder under Section 203 as read with Section 204 of the Penal Code**. It was alleged that on 2nd October 2015 at Kesikenik village, Kuresoi District within Nakuru County he murdered Isaac Cheruiyot Koskei.

(2) He took plea on 23rd October 2015 before *Hon. M. Odero Judge* where he pleaded not guilty.

(3) The matter did not proceed to hearing until 30th January 2020. I heard six witnesses, and the prosecution closed its case.

(4) The only issue for determination at this stage is whether there is sufficient evidence to warrant the accused person being placed on his defence.

Section 306(2) of the Criminal Procedure Code provides for ought to happen at the close of the case for the prosecution;

“That if the court considers that there is evidence that the accused person... committed the offence, it shall inform the accused person of his right to address the court, to give evidence on his own behalf, or make an unsworn statement, and to call witnesses in his defence – and after that the court shall require him to state per the record whether he will call any witnesses on his behalf.”

(5) What evidence is before me for **consideration**?

According to the prosecution witnesses - the accused person, and the deceased, and some of the witnesses were drinking chang'aa at the house of the deceased. It emerged from some of the evidence that the deceased and his wife had the accused's change and when he demanded for it and it was not forthcoming he raised a fracas against the deceased's wife.

According to one witness, the deceased rushed to the house and came back armed with a knife to stab the accused person. Some kind of struggle ensued. The accused disarmed the deceased and stabbed him, then ran away.

The version by the investigating officer was that when the fracas ensued, it was the deceased, his brother and the accused who were involved, and that it was the brother of the deceased who rushed to his house and brought the knife. That in the process the accused was able to disarm the brother to deceased and to proceed to stab the deceased. The deceased's father testified that he actually saw the accused stab the deceased and throw the knife away.

The postmortem report indicated that the deceased died from a single stab wound in the chest penetrating the lung and heart leading to internal bleeding.

The evidence is that the incident happened around 1.00p.m., during the day. Another witness testified that on that same day, he met the accused was saying he had been involved in a fight and was not sure whether the other person was alive. This witness said he was the one who ferried the accused to the police station.

(6) Having considered the foregoing evidence, it is evident that the accused was involved in a fracas, which happened during the day, the

accused was seen stabbing the deceased, which act led to the death of the deceased. Thereafter the accused took himself to the police station. Clearly this is *prima facie* evidence that he committed the offence and ought to be put on his defence in accordance with **Section 306(2) of the Criminal Procedure Code.**

DATED, SIGNED AND DELIVERED AT NAKURU THIS 27TH DAY OF APRIL, 2021.

Mumbua T. Matheka

Judge

In the presence of:

Edna Court Assistant

For state: Ms. Murunga

Accused present via ZOOM

Mention on 11th May 2021 for date for Defence Hearing

Mention notice to issue to Counsel

Mumbua T. Matheka

Judge