



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**Coram: D.K. Kemei – J**

**CRIMINAL (MURDER) CASE NO.15 OF 2017**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**FRANCIS MUTETI MULI.....ACCUSED**

**RULING**

1. The accused person, **FRANCIS MUTETI MULI** was charged with the offence of murder contrary to sections 203 as read with section and 204 of the Penal Code. It is alleged that on the night of 19<sup>th</sup> and 20<sup>th</sup> October, 2016 he murdered **NATHAN MAWEU MBULA**.
2. The accused person is represented by Mr Kituku whilst the state is represented by Mr Machogu.
3. The Prosecution in order to sustain a conviction must prove all the ingredients of the offence of murder. The elements of the offence as provided for under section 203 as read with section 204 of the Penal Code are:
  - i. That the deceased is dead;
  - ii. That the death was caused unlawfully;
  - iii. That there was malice aforethought; and
  - iv. That the accused person directly or indirectly participated in the commission of the alleged offence.
4. The Prosecution called a total of **thirteen (13)** witnesses in support of its case. Pw1 was Rodah Mwikali Maweu wh testified that she saw the accused attacking the deceased on the material day with a club.
5. **Pw2** was **Rodah Kiloko** Muange who testified that on 19.10.2016 she saw the accused hit the deceased and who fell down.
6. **Pw3** was **Festus Chaila Nzuki** who testified that on the material day he was informed that the deceased had been attacked and he organized for a vehicle to ferry him to hospital but who died on 28.10.2016. He stated that he participated in the post mortem that was conducted on 3.10.2016.
7. **Pw4** was **Dorothy Ndunge** who testified that he was informed that the deceased who was her father had been killed.
8. **PW5** was **Jane Munee Mwololo** who testified that on the material day, the accused came to the compound of the deceased and ordered her to leave the area. She testified that on 20.10.2016 she reported to work at the deceased's compound and heard that he had been killed at night.
9. **Pw6** was **Eunice Mueni Maweu** who testified that on 13.10.2016 she heard the accused utter threats to Agnes Mbeneka that were directed towards her family and she heard that on 20.10.2016 the deceased had been badly injured.
10. **Pw7** was **Felix Mutinda Maweu** who testified that on 20.10.2016 he heard that the deceased had been attacked and that on 31.10.2016 he was amongst the persons who identified the body of the deceased before the post mortem examination.

11. **Pw8** was **Sgt Boniface Waita** who testified that on 20.10.2016 he was informed that the deceased had been injured and he went to the deceased's compound and confirmed that the deceased had indeed been injured. He later heard on 28.10.2016 that the deceased had died.

12. **Pw9** was **Pc Ali Athman** who testified that on 20.10.2016 he was informed by Pw8 that the deceased had been attacked and he rushed to the scene where he found the deceased whom he accompanied to hospital then he left for his work post.

13. **Pw10, Asp George Kipkoros** testified that he was informed by Pw8 that the deceased had been attacked and so he organized his officers and went to the scene. However, after a few days he heard that the deceased had succumbed to injuries.

14. **Pw11, Dr Timothy Onyina** testified of the post mortem examination carried out on the deceased on 31.10.2016. The examination revealed that injuries were sustained on the head from a blunt object that resulted from intracranial bleeding. He formed the opinion that the cause of death was head injury, secondary to blunt force trauma. The post mortem report was tendered in court.

15. **Pw12, Sgt Stanley Murage** testified that on 20.10.2016 he was alerted by PW 10 that there was an assault incident. He stated that he rushed to the scene and was informed that the deceased had been attacked but had been rushed to Machakos Level 5 Hospital. He tendered in court a broken brick, 2 small stones and one dry stick which he referred to as the weapons that were used to attack the deceased and which were marked for identification.

16. **Pw13** was **CIP Jones Nyamai Muthoka** who testified that on 8.12.2016 he was instructed to investigate the file that gave rise to the instant proceedings. He testified that he took over the file from the previous officer and that he charged the accused and forwarded the file to office of the DPP. He told the court that he learnt that there was a land dispute that involved the deceased and the accused.

17. The prosecution closed its case and parties were directed to file submissions. Learned counsel for the accused person submitted that the prosecution failed to establish a prima facie case against the accused and urged the court to acquit him.

18. Learned counsel for the state submitted that the accused was involved in the murder of the deceased as per the evidence of Pw1 and Pw2; that the accused had malice aforethought as there was a long standing family land dispute; that the accused was identified by Pw1 and Pw2 and that the cause of death was established from the post mortem report. Counsel urged the court to place the accused on his defence under Section 307 of the Criminal Procedure Code.

19. It is trite law that prior to placing an accused person on his/her defence, the prosecution is required to have established a *prima facie* case against such accused person. It is now a well-established law that a *prima facie* case is established when the evidence adduced is such that a reasonable tribunal, properly directing its mind on the law and evidence would convict the accused person, if no evidence or explanation was set up by the defence. *See Ramanlal .T. Bhatt vs. R [1957] E.A 332*, where the East African Court of Appeal held that a *prima facie* case could not be established by a mere *scintilla* of evidence or by any amount of worthless, discredited prosecution evidence.

20. Also, in the case of *State v. Rajhnath Ramdhan, Amoy Chin Shue, Sunil Ramdhan and Rabindranath Dhanpaul. H.C.A No. S. 104/1997*, J.P. Moosali while quoting Lord Parker C.J.in *Sanjit Chaittal v The State (1985). 39. WLR. 925* stated that:

***“A submission that there is no case to answer may properly be made and upheld: (a) when there has been no evidence adduced by the Prosecution to prove an essential element in the alleged Offence; b) when the evidence adduced by the Prosecution has been so discredited that no reasonable tribunal could safely convict on it...”***

21. I have carefully evaluated the prosecution evidence. I find that, in the absence of any explanation to the contrary from the defence, the prosecution's evidence does establish the three (3) ingredients of the offence of murder. It is not in dispute that there was death and that the cause could be established. On the question of the accused's participation, this court finds that, in the absence of any evidence to the contrary, the evidence of PW1 and PW2 does establish that the accused was seen assaulting the deceased. It transpired that there had been a land dispute between the accused and deceased prior to the incident and as such it would be necessary for him to explain his role in the alleged matter. In arriving at the above conclusions, I do recognize that at this stage, the standard of proof is not proof beyond reasonable doubt as required for a fully-fledged criminal trial. Rather, what is essential is such evidence which if taken literally or on the face of it would establish the essential ingredients of the offence of murder, as well as the accused's participation therein.

22. For those reasons, I find that there is some evidence adduced against the accused person to establish a *prima facie* case against him. The same is sufficient to require him to be put on his defence for the offence of murder contrary to sections 203 and 204 of the Penal Code. I find that he has a case to answer and is now called upon to elect to conduct his defence in line with the provisions of section 306(2) of the Criminal Procedure Code.

It is so ordered.

Dated and delivered at **Machakos** this **26<sup>th</sup>** day of **May, 2020**.

**D. K. Kemei**

**Judge**