



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HCCR NO. 51 OF 2017

REPUBLIC.....PROSECUTION

VERSUS

JOSEPH KIMEU MWONGELA.....1ST ACCUSED

BENARD KYALO KIMEU.....2ND ACCUSED

RULING

1. The accused persons were charged with offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code (Cap. 63), Laws of Kenya.
2. Particulars are that on the night of 26th and 27th December 2010 at Kisiyani Village, Ndiani Sub-location, Kithembe Location in Kilungu District within Makueni County, jointly with others not before court, murdered ALBERT MUINDI KING'OO.
3. They pleaded not guilty and matter went into trial.
4. The prosecution called 4 witnesses and in addition PW5 the Investigating Officer and Doctor PW6 who produced postmortem report.
5. In summary the evidence is to the effect that PW1 testified how 26/12/2010 at 10.00 p.m., people came to their home looking for the deceased claiming that he had stolen from a certain shop.
6. He recognized via evidence Accused No. 2. The people found deceased in the home of Shadrack Wambua and they went away with him to the market centre which was nearby. Later he could hear screams. He slept and the next day he learnt that deceased was killed and burnt. He saw the burnt body of the deceased.
7. PW2 Shadrack Wambua testified that on the said 26/12/2010 a group of people came to his home at 10.00 p.m. and as he moved out of the house they told him they were looking for the thief whom they named as the deceased. He recognized Kyalo Kimeu, 2nd accused. They took away King'oo the deceased as the thief they were pursuing next day he learned that King'oo was killed and burnt.
8. PW3 was stood down as she didn't know why she was in court.
9. PW4 mother of the deceased said that on 26/12/2010 at 10.00 p.m. she parted ways with her son King'oo and on 27/12/2010 at 7.30 a.m., she learnt that he was killed and burnt. She went to the scene and saw the burnt body of her son.
10. The police came and collected the body. She later identified body for the purposes of the post mortem exercise. Later PW4 testified after being recalled. She said when many people came to her home the noise woke her. She identified Joseph Kimeu and Kyalo Kimeu i.e. 1st and 2nd accused person. They were among the people who went away with her son, the deceased.
11. PW5 was the investigating officer in the matter attached to Kilome police station. on 27/12/2010 he was instructed by the OCS to go Kisiyani market to visit alleged scene of murder by members of public. Post mortem was conducted and statements of witnesses were recorded and later accused persons were arrested and charged.
12. He proceeded to the scene in company of PC Ndubi and PC Nderitu. They found very many people gathered at the scene. The body was still at the scene. The body was burnt beyond recognition. They took it to Kilome funeral home.

13. PW6 was Dr. Laiposha who produced post mortem on behalf of Dr. Peter Ndegwa. He noted the body had cut wound injuries and also burnt. The cause of death was due to head injuries and the burns.

14. An evaluation of the evidence on prima facie basis, the court finds that accused 1 & 2 have a case to answer and therefore put on their defense.

SIGNED, DATED AND DELIVERED THIS 26TH DAY OF FEBRUARY, 2019 IN OPEN COURT.

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HON. C. KARIUKI

JUDGE