



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL CASE NO. 51 OF 2017**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**ANTHONY MUSAU NZIOKI.....ACCUSED**

**RULING**

Anthony Musau Nzioki, the accused herein, is jointly charged with others not before the court with the murder of John Muli Mutua contrary to section 203 as read with section 204 of the Penal Code. The offence is alleged to have been committed on the night of 6<sup>th</sup> and 7<sup>th</sup> February 2017 at Spring Valley, Kayole, in Njiru Sub-County in Nairobi County. The accused has denied committing this offence. After a full trial in which 12 witnesses testified for the prosecution, it is the duty of this court to determine at this stage whether the prosecution has established a prima facie case against the accused person to warrant placing him on his defence.

At the conclusion of the case for the prosecution, the prosecution and the defence opted not to make submissions at this stage. Both parties opted to leave matter to the court to consider the evidence and make a determination.

The facts of this case reveal that on 6<sup>th</sup> February 2017 at about 11.00pm, the accused, one Paul, also referred to as 'Odoshe' and the deceased went to the compound where Peter Mwangi Kariuki (PW1), Martin Mwangi Kariuki (PW8) and John Mwema Kimangu (PW9) lived. This was at Spring Valley in Kayole Nairobi. They asked PW1 and another man referred to as 'Mgongo' to join them for a drink. PW1 refused to join them. 'Mgongo' joined them but changed his mind and returned to his house shortly after leaving the compound. At around 3.00pm on 7<sup>th</sup> February 2017 the deceased returned to the compound injured on the head and asking for help from PW1. He was asking for water to wash blood off his head. Immediately after this, the accused and 'Odoshe' came running into the compound looking for the deceased. The deceased ran into the washroom to hide from them. The accused and 'Odoshe' asked for spades from 'Mgongo'. They flushed the deceased from the washroom and assaulted him using the spades given to them. PW1 and the other neighbours intervened and pushed the accused and 'Odoshe' out of the compound. The deceased also left the compound with severe head injuries.

The deceased went to his parents' home in another area of Kayole. He was assisted by his mother Juliana Mwikali (PW2), brother Timothy Makali Mutua (PW4) and father Peter Mutua Makali (PW5) to go to hospital. At first he was taken to Provide Hospital. He was not attended but was referred to Kayole Hospital where first aid was administered. He was thereafter taken to Nairobi West Hospital. The family could not raise money for his treatment at Nairobi West Hospital. He was finally taken to Kenyatta National Hospital where he died on 9<sup>th</sup> February 2017. The accused was arrested and charged with causing the death of the deceased.

I have considered this evidence, specifically that of PW1, PW8 and PW9 who were at the scene. I find it corroborative and convincing that the accused in company with 'Odoshe' who is still at large assaulted the deceased and occasioned him serious injuries to his head. The testimony of the three witnesses is in agreement that the deceased was assaulted on the head. The evidence agrees with that of Dr. Bernard Midia (PW7) who found abrasions and lacerations on the deceased's forehead and defence injuries on his left forearm. The doctor also found blood clots on the right side of the head and features of rising pressure within the head. There was also bleeding in the skin of the head. The doctor's opinion is that the deceased died as a result of head injury due to blunt force trauma. The findings of the doctor are contained in a post mortem report produced in court as Exhibit 1.

The evidence on record satisfied me that a prima facie case has been made out against the accused person to warrant his being placed on his defence. I make a finding that the accused has a case to answer. He has a right, and he is so informed, to inform this court the manner in which he intends to tender evidence in his defence and to inform the court the number of witnesses he wishes to call. Orders shall issue accordingly.

**Delivered, dated and signed this 21<sup>st</sup> day of February 2019.**

**S. N. MUTUKU**

**JUDGE**