

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAMIRA

CRIMINAL CASE NO. 35 OF 2015

THE REPUBLIC.....PROSECUTOR

=VRS=

GEOFFREY ANYONA OYUGI.....ACCUSED

RULING

The accused is charged with Murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the charge are that on 19th December 2012 at Bonyengwe I Sub-location, Borangi Location in Nyamira within Nyamira County the accused murdered Evans Keraso Susua.

The accused pleaded not guilty to the charge. The prosecution's case rested on the evidence of three witnesses, a chief who received report of the deceased's death, a doctor who conducted the post mortem on the body of the deceased and a police officer who came to tell the court what was in the statement of the investigating officer one IP Atani who had been transferred. The prosecution did not call two witnesses who they described as crucial to their case. This despite being afforded several adjournments to do so and even obtaining warrants of arrest against the said witnesses.

Section 306 (1) of the Criminal Procedure Code enjoins this court to determine whether there is evidence that the accused committed this offence before he can be put on his defence.

It is my finding that the evidence of the three prosecution witnesses falls short of the standard required to put the accused on his defence. Whereas the post mortem report suggests that the deceased was killed, there is no evidence that he was killed by the accused. The evidence of the chief is just hearsay and does not in any event incriminate the accused person as according to him the person who reported the matter to him said it was Morara who killed the deceased. He was categorical that he did not know the accused and did not therefore establish a nexus between the case before this court and the said Morara. Pw3's evidence was no more than hearsay – inadmissible hearsay – and did not incriminate the accused. It cannot in any event found a conviction. The circumstances under which the deceased died – whether it was by an unlawful act were not clarified. The court was not told why the police did not arrest the alleged two crucial witnesses yet this court had issued warrants of arrest between them. It is never the duty of the accused person to fill the gaps in the prosecution's case or to prove his innocence which is what putting him on his defence would amount to.

Accordingly, I find that he has no case to answer and acquit him under Section 306 (1) of the Criminal Procedure Code. He should be set at liberty forthwith unless otherwise lawfully held.

Signed, dated and delivered in Nyamira this 21st day of February 2019.

E. N. MAINA

JUDGE

In the Presence of: -

Mr. Jami for DPP

Accused Person

C/A – Mobisa

(N/A for Mr. Kaburi, Advocate)