

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL CASE NO. 13 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

MUIMI MUNEENI.....ACCUSED

RULING

1. On 11th December 2018 Mr. Okemwa the Principal Prosecution Counsel closed the prosecution case and asked the court to make a ruling on a case to answer. He stated that he was taking that action because the investigating officer Mr. Ngyuo who was OCS Kyuso Police Station at the time had severally been evasive in attending court and availing witnesses.
2. Mr. Mwalimu learned counsel for the defence then asked the court to review the evidence and make its ruling on case to answer.
3. A prima facie is established when at the close of the prosecution case the evidence on record is such that, if the accused does not offer any defence statement, a reasonable court considering the evidence on record might convict the accused person.
4. In the present case only two witnesses testified for the prosecution. This was PW1 Dr. Kiema Hanson Mwangi a Medical Officer at Mwingi Sub-District Hospital who testified and produced a postmortem report prepared by Dr. Abdalla who was not able to attend court on that day, though he was still stationed at Mwingi Hospital. Cause of death of the deceased Hussein Sheikh was recorded as cardio pulmonary arrest due to severe head injury, spinal injury, and penetrating chest injury.
5. PW2 was Hussein Osman Kalmoi of Bisan Hargeisa a son of the deceased who was informed by his brother on 1/6/2015 about the death of his father which occurred at Kasiluni near Ukasi trading centre. Next day he went to Mwingi hospital and collected the body for burial at Bisan Hargeisa.
6. The above is the evidence of the prosecution on record. From the evidence on record, the deceased died a violent death. However, there is no evidence that connects the accused even remotely to the killing of the deceased. In those circumstances, it is clear that the prosecution has not tendered evidence in court that even remotely attempts to connect the accused person to the offence.
7. I thus find that the prosecution has not established a prima facie case against the accused and I have no choice but to find him not guilty.
8. I must put it on record that the Prosecuting Counsel asked for several adjournments from the court since 2015 and was frustrated by the lack of cooperation from the police and thus decided to close the case after only two witnesses testified. The Prosecution Counsel is thus not to blame, but the police.
9. The prosecution not having established a prima facie case against the accused, I hereby find him not guilty of murder under section 306 (1) of the Criminal Procedure Code (Cap. 75) and acquit the accused person.

Dated and delivered at Garissa this 21st day of February, 2019.

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George Dulu

JUDGE