

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 69 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

JAMES MUIRURI MURIUKI.....ACCUSED

RULING

James Muiruri Muriuki, the accused, is charged with the murder of Katio Mbuvi contrary to section 203 as read with section 204 of the Penal Code. The offence is alleged to have been committed jointly with another not before the court on 7th day of September 2016 at Ziwani Area in Starehe Sub-County within Nairobi County. The accused denied committing this offence. The accused is represented by Mr. Solomon Wamwayi.

The accused was arrested by street urchins commonly referred to as ‘chokora’ in the early hours of 7th September 2016. Derrick Jeshi, PW7, who was one of the people who arrested the accused places the time of that arrest at 2.00am. At the time of his arrest the accused was in the company of another man. They were at Kamukunji Bridge at the time of accused’s arrest and they were tossing two gunny bags into the river. Derrick was warming himself near that bridge with other street urchins when they saw the two men. The accused had a trolley on which was loaded the two gunny bags. The contents of those bags made the street urchins suspicious. According to Derrick they saw one gunny bag with a human form and made some noise. The man accompanying the accused ran away. The accused was arrested by the street urchins and taken to Kamukunji Police Station together with the trolley. SGT Charles Mugweru, PW5, was one of the police officers who received the accused at Kamukunji Police Station. In company of other police officers they were led by Derrick and other street urchins to the scene where the gunny bags had been tossed into the water. They retrieved the bags from the water. One of the bags was tied securely with a rope. They opened the bags and in one bag, they found the body of a woman and in the other bag they found assorted clothes and personal items. The police recovered a National Identity Card bearing the name of Katio Mbuvi, the deceased. The accused was placed in custody. After the investigations were complete, he was charged with murder. The other person in the company of the accused was not arrested and remains at large to date.

The body of the deceased was examined by Dr. Peter Muriuki Ndegwa, PW10, on 9th September 2016. The doctor found the following injuries:

- (i) Penetrating stab wound on the left breast measuring 3cm long and 3cm from the midline.***
- (ii) Penetrating stab wound on the left lower chest wall 5cm long and 4cm from the midline.***
- (iii) Penetration of the chest cavity through mid-sternum at the level of the 4th intercostal space.***
- (iv) Heart stabbed at the level of the right atrium.***
- (v) Liver stabbed on the left lobe***
- (vi) Bilateral haemothorax.***

The doctor found the body pale and after examination he formed the opinion that the deceased died as a result of exsanguination due to penetrating sharp force trauma to the abdomen and chest.

At the close of the prosecution case, the prosecution counsel did not wish to make submissions. However, Mr. Wamwayi for the accused submitted on behalf of the accused. He submitted that the accused is innocent. He submitted that the accused operated a trolley/handcart which he used to ferry goods for customers on hire; that on the night in question the accused had been hired by the person who escaped to ferry the bags whose contents the accused did not know. Mr. Wamwayi submitted that the prosecution has failed to make out a case against the accused to warrant his being placed on his defence. He urged that this court so finds and acquit the accused for no case to answer.

I have considered the evidence by the prosecution. From this evidence, the circumstances under which the accused was arrested are clear. He was found at the site where two bags were tossed into the river with one bag containing remains of the deceased. It is clear to me that the deceased had been killed elsewhere and her remains stuffed in one of the bags and tossed into the river to conceal it. The cause of death has been established as excessive bleeding due to penetrating sharp force trauma. This is an unlawful death. This court does not doubt that the accused was one of the people found at the scene where the body of the deceased was dumped into the river. It is my finding therefore that the prosecution has established a prima facie case against the accused to warrant his being placed on his defence. The accused shall be put to his defence as required under Section 306 (2) Criminal Procedure Code. This court hereby informs him of his right to his defence and the right to inform this court the manner in which he intends to give that defence and the number of witnesses he intends to call. Orders shall issue accordingly.

Delivered, dated and signed this 27th day of March 2019.

S. N. Mutuku

Judge