



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MURANG'A

CRIMINAL CASE NO. 45 OF 2012

[FORMERLY NYERI HCCR CASE NO. 12 OF 2011]

REPUBLIC.....PROSECUTOR

VERSUS

ALEX ODHIAMBO OMONDI.....1ST ACCUSED

JOSEPH PATRICK WANYOIKE KINYANJUI.....2ND ACCUSED

RULING

1. The two accused persons are charged with *murder* contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars are that on the 17th March 2011 at Kora Sub-Location, Murang'a North District, within Central Province, they jointly murdered *Henry Wachira Kariuki*.
3. They both pleaded *not guilty*. The prosecution called *five* witnesses. Learned counsel for the 1st accused, *Mr. Odinga*, filed submissions dated 14th May 2019. Learned counsel for the 2nd accused, *Mr. Mbutia*, opted not to file submissions.
4. Learned Prosecution Counsel, *Ms. Gichuru*, did *not* file submissions.
5. I have considered the submissions by the 1st accused. There is *direct* evidence from PW4 who saw *both* accused assaulting the deceased outside *K. K. Motherland Bar* at Kora. The deceased was pronounced dead hours later. There is additional *circumstantial* evidence on the homicide from PW1, PW2, PW3 and PW5.
6. I have also paid heed to the *Government Analyst Report* and the *Post Mortem Form* produced at the trial. The pathologist's conclusion is that death resulted from internal bleeding due to splenic rupture.
7. I am well guided by *Bhatt v Republic* [1957] E.A. 332, *R v Kipkering arap Koske & another* 16 EACA 135 (1949).
8. On the digest of the evidence of the *all* the *five* witnesses, I am persuaded that the Republic has established a case requiring an *explanation* by both accused persons.
9. Accordingly, under the provisions of section 306 (2) of the Criminal Procedure Code, I place *both* accused on their defence.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 30th day of May 2019.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of-

Both accused persons.

Mr. J. N. Mbutia for the 2nd accused and holding brief for Mr. Odinga for the 1st accused.

Ms. R. Gichuru for the Republic.

Ms. Dorcas and Ms. Elizabeth, Court Clerks.