

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 27 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

LEIRIYO LEARAMO RASHID alias STEVE.....ACCUSED

RULING

Leiriyo Learamo Rashid alias Steve is charged with murder to which he pleaded not guilty. The charge is framed as follows:

LEIRIYO LEARAMO RASHID alias STEVE: On the 31st March, 2016 at about 9.00pm at Ziwani Estate along Quarry Road in Starehe District within Nairobi County murdered Gideon Ondieki Omwenga.

The prosecution presented to this court seven (7) witnesses to testify against the accused. At the conclusion of the case for the prosecution this court is mandated to consider the evidence and determine whether a case has been made out against the accused to warrant his being called upon to tender his defence.

I have considered all the evidence. It shows that Gideon Ondieki Omwenga, the deceased, died on 31st March 2016 as a result of chest injuries caused by sharp penetrating trauma (stabs). He had sustained multiple injuries to his body as captured in the post mortem report (Ex. 2).

The circumstances leading to the death of the deceased were narrated by Francis Mwaura Nyambura (PW1), Tony Amolo Owade (PW2) and Alex Odhiambo Ogwen (PW3). All the three were residents of Ziwani in the same neighbourhood where this offence is alleged to have been committed. They testified that on 31st March 2016 at about 8.30pm the three were in their respective houses when they heard screams from a woman. The screams were coming from behind their respective houses nearby. They rushed to the scene and found two men fighting. One man, identified by the three witnesses as the accused, was sitting on the other man, identified as the deceased. The accused was holding a knife and using it to stab the deceased repeatedly. The three witnesses tried to stop the accused and managed to take the knife from him. They tied his hands up and called IP Noor Abdikadir (PW5) who was on patrol nearby. When the officer arrived at the scene he took over the matter. The deceased was taken to Guru Nanak Hospital where he was pronounced dead on arrival. The accused was taken to Kamukunji Police Station where he was placed in custody.

The body of the deceased was taken to the City Mortuary where it was examined by Dr. Dorothy Njeru on 5th April 2016. Dr. Njeru documented her findings on the Post Mortem Report (Ex.2). The knife (Ex. 3) recovered from the accused together with accused's brown jacket (Ex.4) and buccal swab and a sample of blood from the deceased were taken to the Government Chemist Laboratory for examination. The report (Ex. 1) from that examination was produced in court by Elizabeth Waithera Oyiego (PW4). It confirms that the jacket and shirt belonging to the accused and the knife were all stained with blood of the deceased.

I have examined and considered all the evidence. The accused was caught in the very act of stabbing the deceased. Francis, Tonny and Alex did not lose sight of him after they found him sitting on the deceased and stabbing him. They tied his hands up and handed him to IP Noor who took him to Kamukunji Police Station. His clothes were found to contain stains of blood belonging to the deceased. The wounds found on the body of the deceased are stab wounds and are consistent with the wounds inflicted on the deceased as testified by Francis, Tonny and Alex. In view of this evidence I find, and so hold, that there is sufficient evidence against the accused to persuade this court to call upon him to make his defence under Section 306 (2) of the Criminal Procedure Code. I hereby find that the accused has a case to answer and inform him of his right to address this court on the manner he wishes to give his evidence in defence and whether he has any witnesses to call. It is so ordered.

Delivered, dated and signed this 23rd day of May 2019.

S. N. Mutuku

Judge