



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYAMIRA**

**CRIMINAL CASE NO. 2 OF 2016**

**THE STATE.....PROSECUTOR**

**VERSUS**

**JOHN MUNGA MANOTI.....ACCUSED**

**RULING**

The accused person 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 the night of 18<sup>th</sup> February 2014 at Bungu village Kiomokondo Sub-location in Manga District within Nyamira County in the republic of Kenya he murdered David Momanyi Ongeta.

The accused pleaded not guilty to the charge after which the prosecution sought to prove its case. Four witnesses gave evidence. Pw1 was a doctor who produced a post mortem on behalf of the Doctor who performed the post-mortem on the body of the deceased. Pw1's evidence was however rendered irrelevant by the testimony of the doctor (Dr. Goga - Pw1) who performed the post mortem. Dr. Goga testified when the trial started afresh pursuant to the accused's exercise of his rights under Section 200 (3) of the Criminal Procedure Code.

Dr. Goga testified that when the body was brought to him for purposes of the post mortem it was in a white shirt and black trousers which had faecal matter. Externally there was a stab wound on the right side of the chest and internally there was a penetrating lung injury on the right. There was another penetrating injury on the right atrium of the heart. The cause of death was cardiorespiratory failure due to penetrating chest injury to the right lung and the right atrium of the heart.

Earlier Joshua Nyangina Ngoe (Pw2) testified that the person he last saw with David Momanyi Ongeta, deceased, was the accused person. He stated that he had left them discussing a motor cycle which the accused had taken to his workshop for repairs. The motor cycle belonged to David Momanyi but its rider was the accused. Pw2 testified that the next day as he was going to take his daughter lunch he saw a crowd near his neighbour's toilet. On his way back he inquired what the matter was and was told David Momanyi's body had been found in the toilet. He did not see the body. Later he was questioned about what had transpired between him, the accused and the deceased the previous day.

Beatrice Mwangi (Pw3) confirmed that a body was discovered and retrieved from a pit latrine in her home the next day. It was her evidence however that she did not see the body when it was retrieved but people said it was the body of David Moturi. Beatrice also told the court that her home was also the home of the accused person as he is her brother's son.

The prosecution did not call any other witnesses because despite this being five (5) years after the accused was arraigned, they could not be found as they had relocated.

At the close of the prosecution's case Mr. Okenye, Advocate for the accused submitted that the prosecution has not established a prima facie case against the accused person to warrant this court to put him on his defence. I agree with him. There was no direct evidence linking the accused to the death of the deceased. One can say there is circumstantial evidence when one considers the evidence of Joshua Nyangina Ngoe (Pw2). However, there was no cogent evidence that the person whose body was found in the pit latrine was David Momanyi who was at Joshua's (Pw2) workshop with the accused the previous day. Joshua testified that he did not see the body. He did not therefore identify it. His evidence that he heard people saying it was David Momanyi is hearsay. As for Pw3 her evidence was that the thing she heard was that the person whose body was found in the latrine was David Moturi. There is no evidence that David Moturi and David Momanyi the deceased in this case are one and the same person. It is also instructive that she too did not see the body. There is also no way of knowing that the body that was presented to the doctor for post mortem examination is the deceased in this case. The doctor depends on relatives of the deceased to identify the body as more often than not he/she does not know the deceased. In this case those who identified the body to the doctor were not called as witnesses. There is therefore no evidence that the post mortem done was in respect of the deceased in this case. So apart from the evidence falling short of proving the charge beyond reasonable doubt, there is doubt as to whether the person whose body was retrieved from the toilet and who had been stabbed through to the heart, was the deceased in this case.

It is my finding that to put the accused person on his defence would be tantamount to asking him to prove his innocence. What if he elects to remain silent? No reasonable tribunal properly directing its mind would convict on the evidence adduced in this case. The upshot is that I find there is no evidence that the accused committed this offence and acquit him under Section 306 (1) of the Criminal Procedure Code. He shall be set at liberty forthwith unless otherwise lawfully held.

**Dated, signed and delivered in Nyamira this 27<sup>th</sup> day of June 2019.**

**E. N. MAINA**

**JUDGE**