



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO.80 OF 2016

REPUBLIC.....ROSECUTOR

VERSUS

POLYCARP OCHIENG AMIMO.....1ST ACCUSED

KEN OCHIENG OGOLLA.....2ND ACCUSED

RULING

The accused persons herein, Polycarp Ochieng Amimo, 1st accused, and Ken Ochieng Ogolla, the second accused, are jointly charged with the murder of Dennis Minani Mwangi, the deceased, contrary to section 203 as read with section 204 of the Penal Code. The offence is alleged to have been committed on the 14th day of June 2015 at Dandora Phase IV, Njiru Sub County within Nairobi County. Each accused has denied committing this offence.

To support its case the prosecution called a total of eight (8) witnesses. I have read and considered their evidence. Wycliff Ochieng Odera, PW1, testified that he was going for lunch with the accused at around 12.00 noon when they were attacked by the two accused persons and another person he referred to as Thethe. PW1 told the court that the two accused persons and Thethe all had knives. They attacked the deceased and stabbed him. He said that Remi, referring to the 2nd accused, stabbed the deceased on the chest; that Polycarp the 1st accused stabbed the deceased on the stomach while Thethe stabbed him on the back.

Hilary Yose Ambwele, PW2, was not at the scene of the stabbing. He received information about the stabbing from one Allan that the deceased was being attacked by the two accused persons and one Thethe. He went to the scene which was a few metres (about 15 metres) from their court with one Martin (PW3). He said he found the deceased having been stabbed. PW2 said he saw stab wounds on the deceased's stomach, back and chest. He also said he found the two accused and one Thethe at the scene and each of them had a knife. Martin Mikonyole Ambale, PW3, also went to the scene in company of PW2. He confirms the evidence of PW2 that they found the deceased having been stabbed and that they found the accused persons and one Thethe at the scene with bloodstained knives. The deceased died in Mama Lucy Hospital.

Evidence shows that the accused persons were at large after the stabbing incident. They were arrested on 13th November 2016 by police officers from Mwiki Police Station. After investigations the two were charged with this offence.

Mr. Otieno for the accused persons submitted that the evidence of the prosecution is weak and cannot be relied on by this court to conclude that the accused persons have a case to answer. I have read the written submissions and the highlights in court. Mr. Otieno raises issue with the evidence of PW1 terming it as weak and inconsistent. He raises issue with the part of the body PW1 said the deceased was stabbed submitting that this evidence is not supported by the findings of the pathologist who found that the deceased died as a result of chest injuries.

Without having to repeat the evidence of all the witnesses, it is my understanding that PW1 was present when the deceased was stabbed. He saw the two accused persons and one Thethe stabbing the deceased. PW2 and PW3 were not at the scene but upon getting the information they rushed to the scene and found the two accused persons and the one called Thethe at the scene. All the three had knives with them and according to the evidence of PW1, PW2 and PW3, the knives had blood stains.

I have read the post mortem report and the evidence of Dr. Peter Muriuki Ndegwa on behalf of Dr. Dorothy Njeru. The doctor pointed out three stab wound as follows:

- i. One stab wound on the right below the ribs 4cm from the midline;
- ii. One stab wound at the back at left scapula region;

iii. One stab wound on the left lower thoracic region going upwards vertically.

The doctor further told the court that internally the left lung had been incised from the back and the right ventricular heart muscle had been incised. The opinion of the doctor was that the cause of death was chest injuries due to penetrating sharp force trauma. It is noteworthy that other than the doctor's opinion, there are other findings on the post mortem report. It is easy for a witness, as was the case here, to be shown one section of the post mortem report and to be asked a question on that part only. In such a case it is easy to leave out other recordings on the report. A keen reading of this post mortem report, Ex. 1, shows all the findings of the doctor. It is in order to describe the stab wounds as having been on the stomach, back and chest. That description is factual because that is what is recorded on the post mortem report on both pages 2 and 3. I find no inconsistency in the description of the stab wounds by PW1, PW2 and PW3.

I have considered the two authorities cited by the defence, *Bhatt v. Republic [1957] EA 332* and *R. v. Galbraith [1981] 1 W L R 1039*. It is my finding that the evidence of the prosecution makes out a case against the accused persons. I find the evidence strong and reliable. It implicates both the accused persons. I believe it and therefore find that each of the accused persons has a case to answer. In compliance with section 306 (2) of the Criminal Procedure Code, I do hereby order that each accused person shall give evidence in his own defence. I hereby inform them of the right to address this court on the manner each accused person wishes to give his defence and whether they will be calling witnesses. Orders shall issue accordingly.

Dated, signed and delivered this 24th day of October 2019.

S. N. Mutuku

Judge