



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL CASE NO. 6 OF 2016

REPUBLIC.....PROSECUTOR

Versus

SIMON MUIGAI MWANGI.....ACCUSED

RULING

1. **SIMON MUIGAI MWANGI (the accused)** was charged with the **murder of Teresia Ngoyen contrary to section 203 as read with section 204 of the Penal Code**. The deceased was the accused's wife. The prosecution called a total of four witnesses.

2. This court's ruling is in accordance with section **306(1)** and **(2)** of the Criminal Procedure Code. Subsection 1 of that section provides as follows:-

“When the evidence of witnesses for the prosecution has been concluded, the court, if it considers that there is no evidence that the accused or anyone of the several accused committed the offence shall, after hearing, if necessary, any arguments which advocate for the prosecution or the defence may desire to submit, record a finding of not guilty.”

3. **PW 1** was a corporal of police called Peter Kariuki. He stated in evidence that on 10th of February 2016 at Speedy area while he was at the assistant chief's office he was informed that there was a commotion in this speedy town area at Matopeni. Someone was injured by the members of the public. The assistant chief requested him that they go to rescue that person. On arriving at Matopeni estate they found a man lying down on the ground. This man was the accused. The members of public at the scene said that the accused was a bad person because he had killed somebody. It was then that PW1 went into a house where he found another police officer namely Corporal Moenga. That officer had come from speedy police station. He had an axe in his hand.

4. PW1 noted that there was a lady (the deceased) in that house, on the ground, and that she was bleeding from her head and ears.

5. PW1 together with others, took both the accused and the deceased to Sipili Nursing Home. Because the condition of the deceased was bad the doctors referred her to Nyahururu Sub-County Hospital. The accused was however attended at that nursing home. The deceased passed away while on the way to hospital.

6. **PW 2** to Kennedy Moenga also confirmed that the accused was on the receiving end of mob justice, when he arrived at the scene at Matopeni. He stated that on arrival he together with his colleague found the accused injured and lying on the ground. The public that were present informed them there was a lady who was injured and was inside one of the houses. On entering into that house they found the deceased lying down and bleeding. They also found an axe leaning on the wall of that house.

7. **PW 3** was Dr Joseph Karimi Kinyua. He was the doctor that performed the post-mortem. In his opinion the deceased died due to severe head injuries resulting from depressed segmental fractures of the right occipital, parietal and temporal bone. He was of the opinion that probable weapon was blunt.

8. **PW 4** was corporal Collins Shikuku. He was the investigating officer assigned to this case. He stated the four witnesses had recorded the statements in respect of his case but that those witnesses had moved away from the area and could not now be traced. He stated that two witnesses were relatives to the deceased. The others witnesses were neighbours of both the accused and the deceased.

9. Justice S. N. Mutuku in the case **Republic v Benard Obunga Obunga (2015)eKLR** discussed the onus placed upon the prosecution to prove a prima facie case and in so doing adopted the holding in the case **Ramanial Tranmbaki Bhatt V R (1957) EA 332** and stated:-

“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out, at the close of the prosecution, the case is merely one which on full consideration might possibly be thought sufficient to sustain a conviction. This is perilously near suggesting that the court would not be prepared to convict if

no defence is made, but rather hopes the defence will fill the gaps in the prosecution case. Nor can we agree that the question whether there is a case to answer depends only on whether there is some evidence, irrespective of its credibility or weight, sufficient to put the accused on his defence. A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence..... It may not be easy to define what is meant by a prima facie case, but at least it must mean one on which a reasonable tribunal properly directing its mind to the law and the evidence would convict if no explanation is offered by the defence.”

10. Bearing in mind the standard which the prosecution ought to meet at the close of its case and considering the evidence adduced in this case I do find that the prosecution failed to prove a prima facie case. In the case **Republic V Joseph Shitandi and another(2014) eKLR** the judge considering whether the accused had a case to answer, after the closure of the prosecution case stated:-

“A case to answer is a case where if the accused keeps quiet the evidence of the prosecution should be such that a conviction will result.”

11. In this case the prosecution relied on the evidence of witnesses who went to the scene after the deceased had been attacked: that evidence therefore is hearsay evidence of what they were informed by the witnesses on the ground. Those witnesses although they recorded their statements with the police they could not be traced for the purpose of attending court to give evidence. The investigating officer informed the court that those witnesses had moved away from their known place of resident.

12. It is also important to state that the axe suspected to be the murder weapon, by the time police officers arrived at the scene had been handled by the public and its evidential value was eroded.

13. Accordingly in this Court’s view there is no evidence on a prima facie basis which, if the accused kept quiet could lead to his conviction. It is for that reason that in accordance with **section 306 (1)** of the Criminal Procedure Code that I find the accused not guilty as charged.

14. I do therefore hereby record a finding of not guilty against Simon Muigai Mwangi. I order that he be set free from custody unless he is otherwise lawfully held.

Dated and Delivered at Nanyuki this 28th day of February 2018

MARY KASANGO

JUDGE

CORAM

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

Accused: Simon Muigai Mwangi

For accused.....

For state:

Language

COURT

Ruling delivered in open court

MARY KASANGO

JUDGE