

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL CASE NO. 18 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

VINCENT KIPKEMOI SIELE.....ACCUSED

RULING

1. The accused, Vincent Kipkemoi Siele, is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 16th day of September, 2015 at about 1.00 a.m at Chepkemel Trading Centre, Kaplelartet Location, /Sigowet/Soin sub-county of Kericho County, he murdered Bernard Kiptoo.

2. The state called 5 witnesses in support of its case. At the close of the prosecution case, the state submitted that it had established a prima facie case to warrant placing the accused on his defence under section 306(2) of the Criminal Procedure Code. Ms. Keli submitted that the prosecution had adduced expert and oral evidence and established that it is the accused who assaulted the deceased by stabbing him with a knife on the chest. It was the case of the state that the elements of *actus reus* and *mens rea* had been established.

3. Ms. Koech for the defence submitted that the state had failed to establish a *prima facie* case against the accused. Her submission was that the state's case was based on circumstantial evidence and a dying declaration that had not been corroborated. She further submitted that the place where the offence is alleged to have taken place was a public place, so there was the possibility that other members of the public could have committed the offence. It was also her submission that the pen knife allegedly used to stab the deceased had not been recovered, so there was no direct or circumstantial evidence to link the accused to the offence.

4. Ms. Koech relied on the case of **Achira vs R (2003) KLR 707** on the need for the court to approach a dying declaration with caution unless there is necessary corroboration. She further relied on **Sawe vs Republic (2003) KLR 364** and **Nzio vs Republic (2005)1KLR 699** with respect to the manner in which the court should deal with circumstantial evidence and urged the court to find that the prosecution has failed to establish a prima facie case against the accused to warrant him being placed on his defence and to acquit him under section 306(2) of the Criminal Procedure Code.

5. I have considered the evidence on record and the submissions of Counsel for the state and the defence. I bear in mind that at this stage, I am only required to address my mind to the question whether the prosecution has established a *prima facie* case against the accused. In **R vs Jagjivan M. Patel and others 1, TLR, 85** the court stated as follows:

"All the court has to decide at the close of evidence of the charge is whether a case is made out against the accused just sufficiently to require him to make a defence, it may be a strong case or it may be a weak case. The court is not required at this stage to apply, its mind in deciding finally whether the evidence is worthy of credit or whether, if believed, it is weighty enough to prove the case conclusively, beyond reasonable doubt. A ruling that there is a case to answer would be justified, in my opinion, in a border line case where the court, though not satisfied as to conclusiveness of the prosecution evidence, is yet of opinion that the case made out is one which on full consideration might possibly be thought sufficient to sustain a conclusion."

6. In the case before me, PW1 testified that he saw the deceased and the accused outside the bar where they had all been drinking. The accused was holding the deceased by the shirt and demanding money. PW1 tried to separate the two and failed, as the accused threatened that he would stab him and showed him a knife. PW1 went back inside the bar to seek help, and returned to find that the deceased had been stabbed, and the accused had disappeared.

7. PW2 was also at the bar. He heard the commotion outside and went to see what was happening. He found PW1 trying to separate the accused and the deceased. The deceased was then found to have a stab wound to the chest and was bleeding profusely. PW3, the owner of the bar, hired a vehicle to take the deceased to hospital. He testified that on the way, the deceased informed him that it was the accused who stabbed him.

8. The medical evidence adduced by the medical doctor, PW5, who produced the post mortem report, was that the cause of death of the deceased was haemorrhage secondary to a stab wound on the chest.

9. Taking the evidence of these witnesses into account, I am satisfied that the prosecution has established a *prima facie* case to warrant placing the accused on his defence. He was seen arguing with the deceased and holding him by his shirt; he threatened PW1, who tried to intervene, with a knife. The deceased was shortly thereafter found bleeding, with a stab wound to the chest, and he declared on the way to hospital that the accused had stabbed him.

10. I accordingly place the accused on his defence in accordance with the provisions of section 306 (2) of the Criminal Procedure Code. I also inform him of his right under section 306 (2) of the Criminal Procedure Code to inform this court whether he intends to give sworn or unsworn evidence in his defence, and whether he intends to call any witnesses.

Dated, Delivered and Signed at Kericho this 21st day of February 2018.

MUMBI NGUGI

JUDGE