

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 22 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

BENJAMIN WAINAINA NJAU alias BENJAMIN NG'ANG'A.....ACCUSED

RULING

Benjamin Wainaina Njau alias Benjamin Ng'ang'a, the accused, is charged with murder contrary to section 203 as read with section 204 of the Penal Code. Particulars of this offence are that on the 7th day of February 2015 at Mahindi Hotel along Race Course Road in Nairobi within Nairobi County he murdered Felista Wanjiru Gicheru. The charge was read to the accused on 23rd February 2015. He denied committing this offence. The prosecution called evidence of eleven (11) witnesses in support of its case. At the close of the prosecution case on 20th February 2018, the focus shifted from the prosecution to this court to consider the evidence and determine whether a prima facie case has been made out against the accused person so as to require him to make his defense. Neither the prosecution nor the defense made any submissions at this stage with each opting to leave the matter to the court to make a determination.

The evidence in support of the prosecution case was presented by eleven (11) witnesses. These are Maureen Njoki Inoi, PW4, Solomon Karanja, PW5 and Mary Muthoni Njiraini, PW6. These three witnesses were at Mahindi Hotel when this incident occurred. Maureen and Karanja were co-workers of the deceased Felista Wanjiru Gicheru. Mary Muthoni was the Manager of Mahindi Hotel. Jane Wanja Gicheru, PW2 and Patricia Wanjiku Ndirangu, PW3 are relatives of the deceased who learned of her death that morning of 7th February 2015. There are two doctors, Dr. Kezzy Shako, PW1, and Dr. Peter Muriuki Ndegwa, PW11. The former examined the accused on 12th February 2015 and certified that he was fit to stand trial. She also found injuries on accused's chest and multiple sutured incised wounds on the left breast. The latter examined the body of the deceased on 11th February 2015 and confirmed her death. He found a penetrating stab wound on the left submandibular area measuring 5cm in length, 2cm in width and 10cm in depth. He found severed left neck blood vessels including the left jugular and carotid arteries. His opinion is that the cause of death was exsanguination due to neck injuries due to a penetrating stab wound. There is also the evidence of police officers from Kamukunji Police Station: SGT Charles Mugweru, PW7 and PC Vincent Lagat, PW8, the Investigating Officer. There is Shavia Mamei, PW10, scenes of crime officer and Ms Ann Nderitu Wangechi, PW9, the Government Analyst.

The evidence of taken cumulatively shows that on 7th February 2015 the accused went to Mahindi Hotel where he met the deceased who was on duty. They were friends. At the time he arrived at the Hotel at about 10.00am, the deceased and her co-workers Maureen and Karanja had finished taking tea. They were on the second floor of the Hotel. The accused and the deceased went into room 121 which the workers used to change their clothes. Shortly thereafter, screams were heard from the deceased who came out running towards Maureen calling her. Maureen was at the time on the second floor. The deceased had a stab wound on her neck on the left side. Maureen noticed that the deceased was bleeding profusely and was not able to talk. Maureen picked pillow cases and tried to stop the bleeding but this was not helping. Karanja followed the trail of blood to room 121 where he the accused was found lying on the floor. There was a knife, Ex. 2, between his legs.

Police were called to the scene and started the investigations. Both the accused and the deceased were taken to Kenyatta National Hospital where the deceased was pronounced dead and the accused was admitted for treatment. He was later charged with this offence.

I find the credible evidence that the accused went to the Mahindi Hotel and met the deceased. He was known to Maureen as a friend of the deceased. According to the evidence of Maureen, Karanja and Muthoni, there were no customers at the Hotel at the time of the incident. I find credible evidence that the accused and the deceased were the only people in room 121 and that this is where the accused was found by the three witnesses and the police. I find credible evidence that the deceased died as a result of penetrating stab wound on her neck that severed main left neck arteries. These injuries are consistent with injuries resulting from a weapon like a knife found between the legs of the accused. The knife was examined by Ann Nderitu the Government Analyst. DNA profiles from the stains of blood found on the knife matched the DNA of the deceased. This evidence confirms that the knife came into contact with the deceased.

Since no one saw the accused stabbing the deceased, the evidence on this issue is circumstantial. It points to the accused to the exclusion of any other person as the one who may have stabbed the deceased. The accused was also injured. The prosecution theory is that he stabbed himself after stabbing the deceased.

After careful consideration of all the evidence, it is my finding that there is strong evidence establishing a prima facie case against the accused. It is a strong and credible evidence and it makes out a case on which this court basing on the law and the evidence could rely on to convict if the accused opts to offer no explanation. Consequently, I find that the accused has a case to answer. He will be put on his defense. The accused is hereby informed by this court that he has a right to tender evidence in his defense either by taking an oath or without taking an oath. He also has a right to call witnesses to his defense. Orders shall issue accordingly.

Delivered, dated and signed this 21st March 2018.

S. N. Mutuku

Judge