

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 81 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

JUMA NYAYO APERI ALIAS MUSTAFA.....ACCUSED

RULING

Juma Nyayo Aperi, alias Mustafa, is charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of this offence are that on the morning of 22nd day of August 2014 at Kingstone Slums within Industrial Area in Nairobi County he murdered Edward Onsongo. The accused denied committing this offence.

The evidence presented to this court by ten prosecution witnesses can be summarized as follows: That at about 3.00am on 22nd August 2014 cries of help were heard by the residents of Kingstone Slums. It was the deceased Edward Onsongo calling for help. He was being beaten by the accused on allegations that he had organized a theft from the accused. Among the people who went out of their houses to see what was happening are Jeremiah Amungo Ombati (PW3) and Felix Murori (PW6). Both were neighbours and knew the accused. Felix knew both the accused and the deceased as friends and he thought they were fighting. On getting near he noticed that it was the accused beating the deceased who was lying on the ground. Felix said the accused was using a *rungu* and a knife. Evidence shows that although members of the public who gathered were telling the accused to stop assaulting the deceased no one did anything to stop the assault. Felix said that the accused could not allow anyone to get near and assist the deceased since he was armed with a *rungu* and knife.

Esther Kemunto (PW2) a relative of the accused was informed about the assault and visited the scene. She confirmed it was her nephew Edward Onsongo who was lying on the ground and that he had died. She reported the matter to the police who visited the scene and commenced investigations. The accused was arrested by members of the public and taken to the scene. Police rescued him from the people who had arrested him and assaulted him.

The death of the deceased has been confirmed by Dr. Dorothy Njeru (PW4) who examined his body and made her findings that the deceased died due to head injury as a result of blunt force trauma with a stab wound. The knife recovered from the scene was examined by Lawrence Kinyua, the Government Analyst, (PW5) who compared DNA profiles from the knife with a blood sample extracted from the body of the deceased. He confirmed that the blood found on the knife was that of the deceased.

My analysis of the evidence of Jeremiah (PW2) and Felix (PW6) confirms that the accused was seen at the scene assaulting the deceased. Jeremiah knew the accused before this day. Felix knew both the accused and the deceased before this day. The accused is said to have used a *rungu* and a knife. There is also mention of a stone at the scene but evidence does not show that the accused used the stone to assault the deceased. The evidence of Dr. Njeru confirms that the injuries found on the body of the deceased and that led to the death of the deceased are consistent with a blunt force trauma as can be caused by a *rungu* and a stab wound as can be caused by a knife. The evidence of the Government Analyst confirms that the knife came into contact with the deceased. This evidence is strong and is the type of evidence that makes out a case on which a competent court can rely on to convict even if the accused were to remain silent.

Having considered all the evidence carefully, I find that I am persuaded that the prosecution has made out a *prima facie* case against the accused person to require him to be placed on his defense. Consequently, it is my finding that Juma Nyayo Aperi has a case to answer. He is hereby informed of his rights under the law that he is at liberty to inform this court whether he will testify in his defense under oath or without taking the oath and whether he will be calling witnesses to his defense. Orders shall issue accordingly.

Delivered, dated and signed this 19th day of April 2018.

S. N. Mutuku

Judge