



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

HIGH COURT CRIMINAL CASE NO. 7 OF 2015

REPUBLICPROSECUTOR

VERSUS

ERASTUS NJUGUNA MIRING'U.....ACCUSED

RULING

1. The accused **ERASTUS NJUGUNA MIRING'U** was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code the particulars of which were that between the night of 31st December 2014 and morning of 1st January 2015 at Nginduri Village in Githunguri Sub-county in Kiambu County murdered **HENRY NJUGUNA NJUGUNA**.

2. He pleaded not guilty and to prove its case against him the state called a total of nine (9) witnesses and at the close of the case both the prosecution and the defence filed their written submissions and on 20/2/2018, the prosecution relied wholly on their written submissions while the defence highlighted its written submission.

3. On behalf of the prosecution it was submitted that according to the evidence of **PW1** and **PW4** the deceased who was the son of the accused came home before midnight drunk and started being troublesome and that in the process of disarming him the accused attacked him on the head with a *panga* and thereafter did not take him for medical attention. It was submitted that thereafter the accused attempted to conceal evidence including the deceased's blood stained clothing and the murder weapon which were later recovered by the police. It was submitted that the accused was placed through evidence at the scene of crime and should therefore be placed on his defence.

4. On behalf of the accused it was submitted that the deceased came to the house injured and refused to be taken to hospital for medical attention until the 1st of January 2015 when they heard him falling down from his house. When they rushed to the place they found him not breathing and the accused reported the death to the police.

5. It was submitted that the prosecution case was based on purely circumstantial evidence and that there was unresolved issue of the deceased dying as a result of alcohol poisoning, falling and hurting his head or other person hitting him and inflicting head injuries on him. In support of their submission, reliance was placed on the following cases:-

a) **REPUBLIC v GEOFFREY CHERUIYOT alias ERICK KIPROTICH KIRUI [2015] eKLR.**

b) **REPUBLIC v JOSEPH NDUNGU KIMATHI [2015] eKLR.**

c) **REPUBLIC v DANIEL MUSYOKA MUASYA & 2 OTHERS [2014] eKLR.**

6. At this stage of the proceedings under **Section 306** of the **Criminal Procedure Code** all that the court is required to do is to find out whether a case has been made by the prosecution to justify calling upon the accused person to offer an explanation if he so wishes as was stated in the case of **REPUBLIC v JAGJIVAN M. PATEL & OTHERS (1) TLR** as follows:-

“All the court has to decide at the close of the evidence in support 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 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 the conclusiveness of the prosecution evidence, is yet of the opinion that the case made out is one which on full consideration might possibly be thought sufficient to sustain a conclusion.”

7. The court is not required to find whether the prosecution has proved its case beyond any reasonable doubt but whether the case has been

made out so that should the accused opt to exercise his right under the Constitution to remain silent, the court would still be able to convict him based on the evidence on record.

8. I have taken into account the evidence of **PW1** the mother of the deceased and the wife to the accused **PW2** and **PW3** their neighbours and **PW4** their minor child and **PW9 DR. PETER NDEGWA** who conducted postmortem on the body of the deceased and without saying much on the said evidence at this stage so as not to compromise the defence, the accused is likely to advance should he hope to do so, and find and hold that the prosecution has established a *prima facie* case to enable me put the accused on his defence so as to offer his side of the story if he so wishes, which I hereby do.

9. The accused is advised of his rights under **Section 306** of the **Criminal Procedure Code**.

DATED, SIGNED and DELIVERED at Nairobi this 11th day of April, 2018.

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Meroka for the State

Mrs. Ojiambo for Ratemo for the Accused

Accused present

Court clerk Paul