

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NUMBER 4 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

DAVID NGARUIYA KINJANJUI.....ACCUSED

RULING

David Ngaruiya Kinyanjui, hereinafter called “the accused” is charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. It is stated in the particulars of the offence that on the 23rd day of December 2013 at around 1.30am at Kihingo Village within Kiambu County the accused murdered Francis Kariuki Kinyanjui, hereinafter called “the deceased”. The accused pleaded not guilty to the charge.

In support of the prosecution case, thirteen (13) witnesses testified. In brief their evidence shows that the accused and the deceased were brothers. At the time of his death the deceased was sharing his house with the deceased. On 22nd December 2013 the deceased, the accused, Richard Kungu (PW5) and John Kige Kihara (PW4) spent the day together mostly drinking alcohol. That evening the deceased had supper with the family of Hannah Njeri (PW7). After eating, the deceased asked for a hammer from PW7 and explained that he needed to use it to break open the door to his house because he did not have the key. The accused was said to have left with the key. PW7 gave him the hammer. The deceased asked PW5 to accompany him to his house and assist him. They broke open the door and the deceased gained entry into the house. PW5 left after both, he and the deceased, had smoked a cigarette together. The following day, the village woke up to the shocking news of deceased’s death.

Evidence further shows that early in the morning of 23rd December 2013 at around midnight, the accused woke up Henry Ikonya (PW3), a neighbour, and asked for help. The accused was crying at the time. He told PW3 that he had gone home and found their house broken open and his brother, the deceased, dead. PW3 told the court that he did not believe the accused. PW3 tried to call Josphat Kihara Kinyanjui (PW1) the brother of the deceased and the accused to inform him but he did not go through.

When the police visited the scene on 23rd December 2013 they found the body of the deceased lying on the left side of the sitting room. A piece of timber, with blood stains on it, was found leaning on the wall inside the house. A blood-stained panga was found lying next to the body. Samples of blood obtained from Josphat (PW1), Paul and Mary Gitau, brothers and sister respectively to the deceased, confirmed that the blood stains found on the piece of wood and panga belonged to a biological sibling of the three. The death of the deceased was caused by head injuries caused by both blunt and sharp trauma.

After investigations, the accused was arrested and charged with this offence. Witnesses told the court that the accused and the deceased used to quarrel often and that during the night of 22nd December 2013 at about 11.00pm Celine Mbaire (PW2), a neighbour of the deceased, heard the voice of the deceased asking “*you want to kill me?*” repeated three times. PW2 did not however hear the voice of any the person.

I have examined this evidence. It does not directly point to the accused as the person who fatally assaulted the deceased. I however find there is circumstantial evidence implicating the accused. This evidence shall be examined closed after taking the defence of the accused to confirm whether it proves beyond reasonable doubt that the accused is the one who killed the deceased. At this stage, I am satisfied that the accused is implicated in evidence and that in my view the prosecution has established a prima facie case

against him. I therefore find that the accused has a case to answer and place him on his defence. The accused is required to give his defence either by taking oath or without taking oath. If he opts to take the oath, he will be subjected to cross examination by the prosecution. He is also at liberty to call witnesses in his defence. Orders shall issue accordingly.

Dated, signed and delivered in open court this 29th March 2017.

S. N. Mutuku

Judge