



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL DIVISION
CRIMINAL (MURDER) CASE NO. 7 of 2013

REPUBLICPROSECUTOR

VERSUS

PATRICK ILAMWENYA IGONGA.....1ST ACCUSED

ALFRED MAKOTSI.....2ND ACCUSED

RULING

Introduction

1. The two accused persons are charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code, the particulars thereof being that on the 25th day of January, 2013 at Bushiangala village, in Kakamega South District within Western Province, jointly unlawfully murdered COLLINS MUSINYA MUKHOB. They each pleaded not guilty to the charge when they appeared for plea on 11th February, 2013.

2. The case was then fixed for hearing on 24th April, 2013, but until the prosecution was forced to close its case on 8th March, 2017, no single witness had been availed to testify over the years. Each time the case came up for hearing, and this was on different occasions the prosecution said it had not managed to serve the attendance of its witnesses. The case was fixed for hearing on 24.04.2013, 23.09.2013, 04.12.2013, 17.06.2014, 26.11.2014, 18.11.2015, 11.05.2016, 30.11.2016, 30.11.2016, 19.01.2017 and 08.03.2017. On each of the occasions, the prosecution did not have witnesses.

The Prosecution Case

3. On the 30.11.2016, the prosecution was granted a last adjournment and case was fixed for hearing on 19.01.2017. On 19.01.2017, defence counsel was absent and although the prosecution did not have witnesses, the court adjourned the case to 08.03.2017 to allow prosecution to avail witnesses and for defence counsel to attend court. On the 08.03.2017, the court refused to grant any further adjournment and the prosecution was forced to close its case without calling a single witness.

Issues for Determination.

4. The issue that arises for determination is whether the prosecution has established a prima facie case requiring the accused to be put on his defence. In answering the above question, the court must be satisfied, though not to the point of beyond reasonable doubt, that the prosecution has placed before it

evidence showing/proving that

- a) The deceased died and the cause of death
- b) The deceased's death was due to the unlawful acts or omissions on the part of the accused;
- b) The accused acted with malice aforethought in causing the death of the deceased.

Analysis and Determination

5. From the record, the prosecution has not called any single witness to testify so it is not clear to the court whether Collins Musinya Mukhabo died and what the cause of his death was. Nor is it clear from the record who was responsible for the deceased's death if it is true that he died. Since it is not known at whose hands the deceased may have died, it cannot be said that the two accused persons had anything to do with the said death, let alone their having done so with malice aforethought.

6. In the circumstances, I find and hold that the prosecution has not established a prima facie case requiring the accused persons to be put on their defence.

Conclusion.

7. In conclusion, I find the accused persons not guilty of the murder of Collins Musinya Mukhabo. Each of them is acquitted under the provisions of Section 306(1) of the Criminal Procedure Code. Unless they are otherwise lawfully held, they are to be released from prison custody forthwith.

It is so ordered.

Ruling delivered, dated and signed in open court at Kakamega this 23rd day of March, 2017

RUTH N. SITATI

JUDGE

In the presence of;-

.....Mr. Khayumbi (present).....For accused persons

.....Mr. Juma (present).....for state

.....Mr. Polycap.....Court Assistant