

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NUMBER 57 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

GERALD NGALI KASYOKA.....ACCUSED

RULING

This is a charge of murder against Gerald Ngali Kasyoka who I will refer to as “the accused”. The charge is brought under Section 203 as read with Section 204 of the Penal Code. Particulars of the offence are that on the night of 29th and 30th June 2011 at Eastleigh in Kamukunji District within Nairobi Area of the Nairobi Province (*sic*) murdered Rose Mutinda Mbithi.

This is an old case whose delay is attributed to several factors. I have noted from the court file record that the accused was arraigned in court for the first time on 5th July 2011. From that date up to 10th October 2011, three months later, when the plea was taken the issue was that the accused had not been examined by the doctor to determine whether he was mentally fit to stand trial. After the report from the doctor was filed certifying the accused fit to stand trial, the case did not proceed due to lack of witnesses. This state of affairs persisted before various judges until 15th June 2015 when the matter was placed before me for hearing. On that day the proceedings kicked off.

The prosecution called a total of nine (9) witnesses. From their evidence, the accused is the second and last born son of the deceased. The first born is Francis Kivai Kasyoka, PW3. The accused and his mother the deceased lived in an iron sheet structure in Eastleigh Wood Street. It was a single room. There were no beds in that house, only mattress or mattresses. According to Florence Kamene Mbithi, PW1, sister to the deceased, the accused used to do odd jobs including washing clothes for a fee. On 30th June 2011 in the morning Florence was at her station where she sold vegetables at Eastleigh when one Rose Wayua called her and told her that she had not seen the deceased that morning. The deceased used to wash clothes for Rose. Florence called the deceased but failed to contact her. She went to deceased’s house. She found the accused at the door of the house he shared with the deceased. The accused was locking the door with a padlock. He had a paper bag in his hands. The paper bag had contents. The accused told Florence that the deceased had gone to work. Florence noted that accused’s T-shirt and shoes were stained with blood. After the accused left, Florence peeped through the iron sheets into the house. She saw items scattered inside the house. Florence called Mutuku, PW4, who was the land lord where the deceased lived and also deceased’s neighbour.

Mutuku and Florence broke open the door and entered. They found household items scattered. The house which was not cemented had wet and muddy floor. There was a block of stone near the wall. It had blood stains. A carpet was placed on the floor with clothes on it. They lifted the carpet and Mutuku scooped some soil out. The body of the deceased was found covered in a leso and buried in the floor of the house. The matter was reported to the police at Pangani Police Station. CPL Joseph Mulwa received the report at about 8.00 am to 9.00 am. He was the duty officer at the time. In company of other police officers and the reportees they went to the scene where they found a crowd of curious members of public gathered. The body was removed and taken to the City Mortuary. The accused was arrested by members of public on the same day and taken to Pangani Police Station. After investigations he was charged with this offence.

Mutuku told the court further that he owned one house with six rooms. Two rooms out of the six were occupied, one by the deceased and her son the accused and the other by Mutuku. The other rooms were

used as stores. He testified that during the night in issue he heard loud bangs like something falling. He did not know where the sound was coming from and his attempts to find out by going out of his house did not yield results. Accused's shoes, pair of jeans and T-shirt as well as the block of stone found in the house were examined at the Government Laboratories. They were found to contain light stains of blood. The blood found on the T-shirt and the stone belonged to the deceased while that found on the shoes and pair of jeans belonged to the accused.

I have considered this evidence. It is mostly circumstantial. There is also forensic evidence implicating the accused. I have read Section 306 (2) of the Criminal Procedure Code which provides thus:

When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court, either personally or by his advocate (if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact.

It is my considered view that the prosecution has made out a prima facie case against the accused person. The evidence on record is evidence on which this court, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence (**see Ramanlal Trambaklal Bhatt v. R [1957] E.A 332**). Consequent to this finding, I hold that the accused has a case to answer and I hereby place him on his defence. In line with Section 306 (2) Criminal Procedure Code he is hereby briefed on his right to inform this court whether he will give a sworn statement of defence or he will testify without taking oath. He is required too, to inform this court whether he will be calling any witnesses to testify in his defence. Orders shall issue accordingly.

Dated, signed and delivered this 26th April 2017.

S. N. Mutuku

Judge