



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL DIVISION
CRIMINAL CASE NO. 22 OF 2012

REPUBLICPROSECUTOR

VERSUS

JAMES JAMLECK OWUYA.....ACCUSED

R U L I N G

Introduction

1. The accused is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on the 25th day of June, 2012 at Shitimba Village Khusiku Sub-location Mulwanda Location Khwisero District within Kakamega County the accused murdered Ezekiel Ambani.

2. The accused pleaded not guilty to the said charge and the case proceeded and was heard in full. Accused was initially represented by Mr. Amasakha Advocate but later Munyendo Advocate took over.

The Prosecution Case.

3. The prosecution called five (5) witnesses. PW1 M A, a minor, is the only one said to have witnessed the incident on the material day. She testified that on that day at about 4.30Pm she saw accused chasing the deceased who was his father. She stated that the accused had a big machete which he used to cut his father on the back of the neck. She ran and reported the incident to her mother and uncle who also informed her grandmother. The accused is a neighbour. The machete was left at the scene by the accused person.

4. PW2 was Rosemary Atieno Wambani. She is the mother to PW1, she confirmed that on the 25th June, 2012 she received information from her daughter that the accused had cut her husband. She was with her brother in law. They immediately rushed to the scene where they found her husband had already died. They also found a machete at the scene. They did not do anything because the accused ran and reported to the chief that he had killed the deceased.

5. PW3 Joseph Owino Pwache, reiterated the testimony of PW1 and PW2 and also stated that accused surrendered to the police and he even described the machete as having an elongated handle and that it belonged to the accused.

6. John Philip Oduor who testified as PW4 was informed of the incident by his wife. He proceeded to the

scene where he saw the deceased's body and a machete. He knew the machete belonged to the accused because, according to him, the accused had bad habits. He identified the body for post mortem. The neck had been severed.

7. IP John Ogoti No. 233647 testified as PW5. He stated that on the 25th June, 2012 at 6.20 pm while at Khwisero Police Station, he received a call from his colleague, the in charge of Omusalaba Sgt Ogutu who informed him that he had a murder suspect. He arranged for a vehicle and re-arrested the accused from Omusalaba. He went to the scene where they found the deceased's body lying next to a machete which was blood stained.

8. He made enquires at the scene and was told that the deceased was murdered by his son (accused) who was in custody. At the scene were the machete, Islamic cap and blanket which he recovered and sent to the Government Chemist. After completing the investigations the suspect was charged. The prosecution closed its case after the five (5) witnesses completed giving their evidence.

Analysis and Determination

9. The issue for determination is whether the prosecution has established a prima facie case to warrant placing the accused person on his defence.

10. The prosecution witnesses have stated that they know the accused, PW1 squarely placed the accused at the scene and though a minor at the time she narrated the events of the 25th June, 2012 as she saw them. She made a report to PW2 and PW3 who went to the scene where PW3 saw the machete that was used to cut the deceased. PW3 described the said machete and added that the same belonged to the accused, a fact that was confirmed by (PW4).

11. PW5 investigated the case and collected the exhibits which were taken to the Government Chemist for analysis. From the above findings I do find that the prosecution has established a prima facie case against the accused who is placed on his defence as he has a case to answer. The accused may give sworn or unsworn evidence and call witnesses. However, if he gives unsworn evidence no questions can be put to him. He may also elect to remain silent and let the court decide the case on the evidence that is on record.

Orders accordingly

Ruling delivered, dated and signed in open court at Kakamega this 28th day of June 2017

RUTH N. SITATI

JUDGE

In the presence of;-

Mr. Nunyendo (present) for Accused

Mr. Juma(present) for state

Polycap Court Assistant.