



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAPENGURIA

CRIMINAL/MURDER CASE NUMBER 15 OF 2016

(Formerly Kitale HCCR.C 52 of 2014)

REPUBLIC.....PROSECUTION

VERSUS

JAMES S. KANDUA.....ACCUSED

RULING

On 28th day of October, 2014 the accused herein, one James Simiyu Kandua was charged with the offence of **Murder, contrary to Section 203 as read with Section 204 of the Penal Code.**

The particulars of this offence are that on the 21st day of October, 2014 at Cereal Board, Kapenguria Location, within West Pokot County, the accused murdered Samson Chepkombe. The prosecution called five witnesses and their case is that on 21/10/2014 at about 8.00am PW-1 who is a driver was at his place of work in Kapenguria. He heard screams from a neighbour's house.

He proceeded to the place and found that there was a person who had been killed and his body placed in a small grass thatched house belonging to the accused. The accused was in the said house and his hands were tied up. It was alleged that the accused had disagreed with the deceased and assaulted him. The accused alleged he was drunk at the time. PW-1 reported the matter to the police. PW-4, a Police Officer who at the time was attached to Makutano Police Patrol Base received the report about the incident. He proceeded to the scene. He rescued the suspect from the public who were baying for his blood. The accused was taken to Makutano Police Patrol Base for safety.

PW-5 was later instructed by DCIO Kapenguria, to go to Cereal Board in Kapenguria where there was a dead body. He proceeded in company of Mr. Kuria. They found a dead body of a person aged about 75 to 80 years. The body was in a small mud, grass thatched house. About 5 metres away, outside, there was a pool of blood. They took the body to Kapenguria Hospital for post-mortem. On the way they passed through Makutano Police Patrol Base where they picked the accused person. The suspect was taken to Kapenguria Police Station for interrogation.

On 24/10/2014 post-mortem was conducted by PW-3 at Kapenguria District Hospital. The body was identified to him by PW-2, a brother to the deceased. The doctor was of the opinion that the cause of death to the deceased was cardio-respiratory arrest secondary to aspiration pneumonia, which resulted to hypoxaemia. He thus filled the post-mortem report.

At the close of the prosecution case, the defence submitted. Briefly, they urged this court to find that the accused person has no case to answer and acquit him under **Section 210 of the CPC**. I am urged by the

defence to find that the accused did not cause the death of the deceased by an unlawful act or omission on his part. There is no eye witness to the act or omission which caused the death of the deceased, and the cause of death which was said to be pneumonia is not connected to the hearsay evidence that the deceased was injured by the accused.

Having weighed the evidence and the submissions by the defence I do concede that there is no evidence directly connecting the accused with the cause of death to the deceased. Circumstantial evidence available is that the deceased was found in the accused hut, already dead. He had an injury at the back of his head and about 5 metres from the house there was a pool of blood. There is no evidence that the accused is the one who injured the deceased on the back of his head. Such injury could as well have resulted from a fall. The said injury is not the one that led to the death of the deceased but pneumonia. It therefore follows that even if there was reliable evidence that the accused caused the injury at the back of the deceased's head, he is not the one who killed him as the injury did not give rise to his death.

As was correctly put by the defence ingredients for the offence of murder are that:-

- a. **Proof that the victim died.**
- b. **Establish the cause of death.**
- c. **Linking the death to unlawful act or omission by the accused person.**
- d. **Proof that the unlawful act or omission was committed with malice afore thought.**

In this case the prosecution established that the deceased died but out of a cause of which the accused had no hand. The evidence therefore fails to establish a *prima facie* case against him and is accordingly acquitted of it under **Section 210 of the CPC**.

Ruling read and signed in presence of Ms. Chebet for the accused and Mr. Mark for the State.

S. M. GITHINJI

JUDGE

21.6.2017