

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

CRIMINAL CASE NO. 82 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

DANIEL WAFULA OLONGI.....ACCUSED

RULING

Daniel Wafula Olongi, the accused herein, is charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on 16th day of September 2012 at Reuben Slums within Nairobi County he murdered Eunice Kimuma. The accused denied committing this offence.

Eight (8) witnesses have testified. From the evidence, the deceased was in the company of Lydia Kemuma on 14th September 2012 around 6.00pm when they met the accused. This was at Mukuru Kwa Njenga Slums Nairobi. The accused was deceased's friend. An argument ensued between the deceased and the accused. The accused assaulted the deceased with a piece of timber which he had been carrying. He also kicked her on the stomach. The deceased was taken to a nearby clinic where she was treated. She was taken home. However, she continued complaining to pains in the stomach. She was taken to Kenyatta National Hospital. She did not survive. The accused was arrested and charged with this offence.

The doctor who examined the body of the deceased confirmed the injuries sustained by the deceased. He told the court that he found a laceration on the left parietal scalp and subcutaneous contusion anterior abdominal area. The small intestines were perforated, the bowels were bruised and soiled peritoneum. His opinion is that the deceased died due to peritonitis due to blunt force trauma with head injury. He explained this to mean that the cause of death was due to infection of the peritoneum due to perforated intestines.

I have considered all the evidence and the submissions. It is my view that the injuries described by the doctor are consistent with the evidence of Lydia who told the court that the accused hit the deceased on the head with a piece of timber and also kicked her on the abdomen. Lydia said further that the deceased kept on complaining about the stomach and Lydia noticed that it was swollen. I am convinced that the prosecution has established a prima facie case against the accused. Section 306 (2) of the Criminal Procedure Code empowers this court to place an accused person on his defense where evidence implicates him. I therefore find and hold that the accused has a case to answer. He is hereby informed of his right to indicate to this court whether he will testify under oath or without taking oath and whether he will call any witnesses to his defense. Orders shall issue accordingly.

Dated, signed and delivered this 19th day of June 2017.

S. N. MUTUKU

JUDGE