



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 30 OF 2013

REPUBLIC.....RESPONDENT

VERSUS

JOHNSTONE KIPKOSGEI.....ACCUSED

RULING

The accused **JOHNSTONE KIPKOSGEI** faces a charge of **MURDER CONTRAY TO SECTION 203 as read with SECTION 204 OF THE PENAL CODE**. The particulars of the charge were that

“On the 17th day of March 2013 at Wechego Village in Kuresoi District within Nakuru County murdered CHARLES KIMUTAI KIRUI”

The accused pleaded ‘**Not Guilty**’ to the charge and his trial commenced in the High Court in Nakuru on 22/2/2017. The prosecution called only three (3) witnesses support of their case.

PW2 DR. TITUS NGULUNGU was a consultant pathologist based at Nakuru PGH. This witness produced the autopsy report on the body of the deceased. The body was found to have a single arrow wound to the left side of his chest with the arrow still lodged in the chest. The cause of death was found to be ‘**cardiac arrest due to blood in cardiac sac and heart dysfunction due to injury to the cardiac muscle due to a sharp force trauma to the left chest**’. **PW2** produced as an exhibit the duly filled and signed post-mortem report **P. exb 1**.

PW3 CORPORAL FRANCISCO ODUOK OCHUDO was the arresting officer. He told the court that upon being alerted of an incident in Tinet Location he went to the scene. There he found the dead body of the deceased lying on its back and covered with a blanket. **PW3** removed the body to the mortuary.

Police commenced investigations to establish who had killed the deceased and eventually the accused was arrested and charged.

PW1 ALFRED KIPRONO was the deceaseds brother. He told the court that on the night on 17/3/2013 the accused and deceased were both drinking at the home of a neighbour known as ‘**Ojwang**’.

Later **PW1** heard the wife of the deceased whose name is given as ‘**Judy**’ quarrelling with a lady called ‘**Hannah**’. Then **PW1** heard the deceased quarrelling with accused. The deceased was demanding that accused refund his Ksh 3,500/=. **PW1** left her house and tried to persuade the deceased to leave the drinking den and return to his home. The deceased declined and pushed **PW1** away. At that **PW1** returned to his house to sleep.

After a while **PW1** heard people shouting that the deceased had been shot with an arrow. He rushed to the scene and found the deceased lying on the ground clutching on arrow which was lodged in his chest. **PW1** and others carried the deceased to his house. It is not clear exactly when the deceased expired but by the time **PW3** arrived at the home the next day the deceased was dead.

The fact that the deceased met his death due to having been shot with an arrow is not in any doubt. **PW1** and **PW3** both told the court that they saw the arrow head lodged in the deceased’s chest. However this arrow head was not produced as an exhibit in this case. No reason is given why such a crucial exhibit was not brought to court.

There was no witness who saw the accused shoot the deceased. **PW1** told the court that he was not at the scene when the deceased was shot. In his evidence in chief, **PW1** says

“I did not see who shot him (deceased)”.

PW3 gave the court a very detailed narrative regarding events leading up to the death of the deceased. However **PW3** did not himself witness any of these events. He only narrated what he had been told by the other witnesses who were at the scene. None of these eyewitnesses was called to testify in court. As such the testimony given by **PW3** amounts to mere hearsay which is not sufficient to implicate the accused. It would appear that the reason the accused was arrested is because **PW1** had heard him quarrelling with the deceased. The fact that the two may have quarreled on the night in question does not in any way prove that the accused was implicit in this offence.

It is a well established principal that the onus lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution in this case have failed to reach that threshold.

Accordingly I find that no prima facie case has been established. I enter a verdict of **‘Not Guilty’** and I acquit the accused of this charge of murder. Accused is to be set at liberty forthwith unless he is otherwise lawfully held.

Dated in Nakuru this 29th day of Sept 2017.

Mr Njogu holding brief

MAUREEN A. ODERO

JUDGE