



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL CASE NO. 121 OF 2014**

**REPUBLIC.....RESPONDENT**

**VERSUS**

**GEOFFREY MUGAMBI LOYA.....ACCUSED**

**RULING**

The accused **GEOFFREY MUGAMBI LOYA** faces a charge of **MURDER CONTRARY TO SECTION 203 as read with SECTION 204 OF THE PENAL CODE**. The particulars of the charge were that

***“On the 2<sup>nd</sup> day of December, 2014 at Losogwa Village in Nyahururu Sub-county within Laikipia County murdered JONATHAN KIPKOECH RONO”.***

The accused entered a plea of ‘**Not Guilty**’ to the charge and his trial commenced on 10/2/2016. The prosecution called nine (9) witnesses in support of their case.

**PW1 JOSEPHAT KOSGEI** told the court that the deceased was his son. On 2/12/2014 at 9.00pm the witness received a call from the village chairman informing him that his son had been stabbed and killed.

**PW3 STELLA CHEPKURUI** told the court that on 2/12/2014 the deceased came to her house. He sent a child to call a lady called ‘**Kendi**’. The lady came. **PW3** prepared supper which they all took together. Then the deceased and ‘**Kendi**’ left together shortly thereafter **PW3** heard a commotion outside but did not bother to go and check what the problem was. ‘**Kendi**’ returned to the house of **PW3** and informed the witness that the accused and deceased were fighting outside. **PW3** confirmed that she knew the accused as the lover of ‘**Kendi**’ with whom he cohabited.

**PW4 NDUNGU NJORA** was a village elder. He told the court that on 2/12/2014 at 7.30pm he was inside his house. The accused came to his house carrying a bloody knife. The accused informed **PW4** that he had stabbed a man whom he had found with his wife. **PW4** instructed accused to go and make the report at the police station. The accused left and **PW4** phoned the police post and alerted officers of the incident. **PW4** later collected the lady ‘**Kendi**’ and took her to the police station.

Police commenced investigations into the matter after which the accused was arraigned in court and charged.

The prosecution having closed its case this court must now analyze the evidence on record to determine whether a prima facie case had been established to warrant calling upon the accused to defence himself.

The fact as well as the cause of death of the deceased are not in any doubt. **PW1** the father of the deceased identified the body of his son at the mortuary. **PW2 CHRISTOPHER KIPTOO** a neighbour to the deceased also confirmed having identified the body of the deceased at the mortuary. Both witnesses who knew the deceased well gave his name as **Jonathan Kipkoech Rono**’.

Evidence regarding the cause of death was tendered by **PW8 DR. JOSEPH KINYUA** who produced the duly filled and signed post-mortem report as an exhibit **P. exb 2**. **PW8** told the court that upon examination the body was found to have two deep cut wounds to the chest. The cause of death was opined to be ‘**penetrating heart injury with massive haemothorax and haemoperitonium**’. This was expert medical opinion evidence and was neither challenged nor controverted by the defence. I therefore find that the deceased died as the result of stab wounds to the chest.

Having proved the fact and cause of death the prosecution is required to go further and prove that it was the accused who unlawfully stabbed the deceased leading to his death.

There was no witness who saw the accused assault and stab the deceased. **PW1** was only called by the village elder and informed that his son had been stabbed and killed. **PW3** told the court that she only heard a commotion outside. She did not bother to go to check thus she did not know the source or cause of the commotion which she heard.

**PW3** told the court that on the night in question the deceased had taken supper in her house and after supper he and a lady called '**Kendi**' left together. Shortly thereafter this '**Kendi**' returned to the house of **PW3** and told her that accused and deceased were fighting outside. This lady '**Kendi**' must have seen the two fighting. It has been implied that being the wife of the accused this '**Kendi**' was the cause of the fight between the two men. However despite the fact that **PW4** the village elder confirmed that he collected '**Kendi**' from the house of **PW3** and took her to the police station, she was not called as a witness in this case. The lady appears to have vanished into thin air. She was a crucial witness and the failure to call her as a witness seriously weakens the prosecution case.

**PW4 NDUNGU NJORA** was the village chairman. He told the court that on the material day at 7.30pm the accused came to his house carrying a bloody knife and told **PW4** that he had killed a man whom he found with his (accused's) wife. Strangely enough despite being the village chairman **PW4** took no action to either detain or apprehend the accused. He merely told him to go and report the matter to the police.

The evidence tendered by **PW4** is problematic on two fronts. Firstly although **PW4** claims that the accused named '**Jonathan**' as the man he had stabbed, under cross examination by defence counsel **PW4** admits that in his written statements he did not give the name of the person accused had allegedly stabbed. **PW4** concedes that in his statement he did not give the name of the victim. Thus the statement of **PW4** is at odds with his testimony to the court. If indeed accused had given the name of the person he stabbed then I have no doubt that **PW4** would have also included this name in his written statement to the police.

Secondly by his evidence **PW4** suggests that the accused confessed to him that he had stabbed a man. The law regarding the admissibility of confessions is clearly set out in section 25A of the Evidence Act Cap 81 Laws of Kenya. A confession is only admissible as evidence where the same is made before an officer above the rank of Inspector or to a magistrate in court and is reduced into writing. A mere declaration by a civilian that a suspect confessed to the crime will not suffice. Thus whatever the accused may have stated to **PW4** is not admissible as proof of his guilt.

Once again I find it odd that being a community leader **PW4** did not even bother to take this bloody knife from the accused and keep it as evidence to hand over to police. No blood stained knife was produced as an exhibit in this case **PW7 ELIZABETH WAITHERA** the government chemist testified in court. She told the court that the police did give her a knife to examine. However the knife had no blood stains on it thus **PW7** was unable to conduct a comparative analysis with the blood sample of the deceased.

Therefore this court is left with a situation where there is no witness who saw the accused attack or assault the deceased. The key witness a lady called '**Kendi**' who probably witnessed the incidence was **not** called as a witness to the case. The confession allegedly made by the accused to **PW4** is not admissible in a court of law and the knife allegedly used to commit the murder had no blood stains on it. The prosecution case raises more questions than answers.

The law requires that the prosecution prove their case beyond reasonable doubt. The accused has no obligation in law to prove his innocence neither is the accused required to fill the gaps in the prosecution case. With the evidence on record if the accused elected to keep silent in his defence no conviction would be forthcoming. I therefore find that the prosecution have failed to prove a prima facie case against the accused. I enter a verdict of '**Not Guilty**' and I acquit the accused of this charge of murder.

The accused is to be set at liberty forthwith unless he is otherwise lawfully held.

**Dated and delivered in Nakuru this 22<sup>nd</sup> day of September, 2017.**

Mr. Ombati for accused

**Maureen A. Odero**

**Judge**