



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 81 OF 2014

REPUBLIC.....RESPONDENT

VERSUS

NICHOLAS KIPYEGON RONO.....1ST ACCUSED

ALFRED KIPLANGAT RONO.....2ND ACCUSED

RULING

The two accused persons namely **NICHOLAS KIPYEGON RONO** (hereinafter referred to as the 1st accused) and **ALFRED KIPLANGAT RONO** (hereinafter referred to as 2nd accused) are jointly charged with the offence of **MURDER CONTRARY TO SECTION 203 as read with SECTION 204 OF THE PENAL CODE**. The particulars of the charge were that

“On the 29th day of June 2014 at Westgate Hotel in Kuresoi within Nakuru County jointly murdered GILBERT KIPKURI LANGAT”.

Both accused pleaded ‘**Not Guilty**’ to the charge and their trial commenced on 25/2/2016. The prosecution led by the learned State Counsel called seven (7) witnesses in support of their case.

PW1 ALFRED KIPROTICH was a brother to the deceased. He told the court that on 29/6/2014 at about 9.00am he and the deceased were in a local bar drinking. At some point **PW1** stepped outside to chat with others. The barmaid then called **PW1** and told him that his brother (the deceased) had been hit on the head. **PW1** rushed back and found the deceased lying in the corridor bleeding from the head. He rushed the deceased to Tenwek Hospital where he died 3 days later.

PW2 CYNTHIA MORAA told the court that she works as a bar-maid at Moinget Bar in Kuresoi. On 29/6/2014 at 9.00pm she was on duty. **PW2** confirms that **PW1** and deceased were drinking in that Bar and she served them. At some point both went outside. Then another customer alerted **PW1** of a commotion in the corridor. **PW1** went out and saw deceased lying on the ground bleeding, she called for **PW1** who came and took his brother to hospital. The deceased later died whilst undergoing treatment.

The prosecution having closed its case this court is required to analyse the evidence on record and make a determination as to whether a prima facie case has been established to warrant calling upon the two accused persons to defend themselves.

The fact as well as the cause of death of the deceased were readily proved. Both **PW1** and **PW2** testified that they saw the deceased lying in the corridor outside the bar bleeding from an injury to his head. **PW4 DANIEL KIPLANGAT CHESINGEI** was the father of the deceased. He told the court that on 3/7/2014 he went to the mortuary at Tenwek Hospital where he identified the body of the deceased.

Evidence regarding the cause of death was tendered by **PW7 DR. TITUS NGULUNGU** a consultant pathologist based at Nakuru PGH. **PW7** confirmed that indeed an autopsy was conducted on the body of the deceased. The body was found to have an open fracture on the side of the head. The cause of death was opined to be ‘**Head Injury**’. The duly filled and signed post mortem report was produced by this witness as an exhibit **P exb 1**. This was expert medical evidence and was neither challenged nor controverted by the defence. I therefore find that the deceased met his death due to a blow to the head.

Having proved the fact as well as the cause of death the prosecution must go further and tender evidence to prove beyond reasonable doubt that it was the 2 accused (or either of them) who inflicted the fatal blow on the deceased.

PW1 who was the deceased’s brother told the court that the two were together on the fateful night. They were at a bar in Kuresoi drinking.

PW1 claims that upon being alerted by the barmaid he rushed back into the bar and found deceased lying bleeding on the ground.

PW1 goes on to state that although he did not see who hit his brother he saw the two accuseds standing over the deceased in that corridor and one of them was holding a metal rod. This witness does not inform the court how he was able to see and identify the two accused persons given that the incident occurred at night (9.00pm). **PW1** did not make any mention of the source and/or quality of light available in the corridor which enabled him to see and identify the two men.

Further under cross-examination **PW1** admits that in his written statement to the police he made no mention at all of having seen the two accuseds standing over his injured brother. This was a crucial piece of evidence. If the witness had truly seen and identified the men who had fatally assaulted his brother, he would not have failed to mention this in his statement to police.

I was able to observe the demeanour of **PW1** as he testified. He was evasive and unsure. He did not strike me as an honest witness. I find that **PW1** was not entirely honest in his testimony. It was clear to me that he was out to embellish his evidence in order to implicate the two accused persons. I reject the testimony of **PW1** that he saw the two accused brandishing an iron rod, standing over the deceased.

PW2 the barmaid was a more honest witness. She stated that she did not herself see who assaulted the deceased. She was only alerted about the incident by a customer and when she went out she found the deceased lying in the corridor having already been injured. **PW2** categorically states

“I did not see the 2 accused at the scene”.

Thereby witness contradicts the testimony of **PW1** that he found the accuseds at the scene.

PW3 PURITY CHEPKURUI told the court that the two accuseds were her employees at her hotel called Westgate Hotel. She too did not witness the events leading to the assault on the deceased. **PW3** told the court that she received a phone call from a certain watchman who informed her that her two employees were fighting with others. This watchman who must have witnessed the incident was not named by **PW3**. Neither did the prosecution call him as a witness. Thus therefore remains hearsay evidence which is not admissible as against the two accused persons.

PW5 PC PETER GATHAMBERI was the officer who took over the investigation of the case following the transfer of the previous investigating officer. **PW5** gave the court a very detailed and elaborate narration of what happened. He told the court how the 2nd accused picked a fight with the deceased over a woman and how the two met and fought outside the toilet where the 2nd accused hit and injured the deceased. The only problem with this entire narration is that **PW5** did not himself witness any of the events he told the court about. He was **not** at the scene on the material day. No single prosecution witness has corroborated the version of events given by **PW5**. Again this remains pure hearsay at best and at worst a fabrication by **PW5**, which cannot be used to implicate either of the two accuseds. In any event even by his own (unproved) narration **PW5** admitted that the 1st accused played no role whatsoever in this alleged assault of the deceased. Why then was the 1st accused charged with this murder?

On the whole I find that no tangible or direct evidence has been tendered to link either of the two accuseds to the fatal assault on the deceased. If the 2nd accused's exercised their legal right to remain silent in their defence the evidence on record would not be sufficient to support a conviction.

Accordingly I enter a verdict of **‘Not Guilty’** and I acquit both accused persons of this charge of murder. Each accused is to be set at liberty forthwith unless otherwise lawfully held.

Read in open court.

Mr Nyambato holding brief for Mr. Ochang

Dated and delivered in Nakuru this 22nd day of September, 2017.

Maureen A. Odero

Judge