

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KAKAMEGA.

CRIMINAL CASE NO. 50 OF 2009.

REPUBLIC.....PROSECUTOR

VERSUS

PATRICK MANANE BUKACHI ALIAS KAMO.....ACCUSED

R U L I N G.

1. The accused herein, Fredrick Manane Butachi alias Kamo appeared before Lenaola, J (as he then was) on 22nd March, 2010 to answer a charge of murder contrary to section 203 as read with section 204 of the Penal Code, Chapter 63 Laws of Kenya. The particulars of the charge are that on the 4th day of August, 2007 at Elukayi village Mundubelwa sub-location, Kisa North location in Butere District within Western province, jointly with others before court, murdered JANE ANDAYI OSALE. He denied the charge.

2. During the hearing of the prosecution case, the prosecution called four (4) witnesses, with Dr. Dixon Mchana Mwaludindi testifying at PW1. Dr. Mchana testified on behalf of Dr. Oreke who did the post mortem examination on the body of the deceased on 9th August, 2007. According to the post mortem report which was done on 9th August, 2007 at Kakamega PGH mortuary after the body was identified by Gabriel Anzila Omung'ala, PW3 and Phyllis Omung'ala (not called as a witness). Externally, the body had wounds on the forehead and a cut wound on the back of the right wrist. There were also cuts on both knees. The tendons below the knees were also cut.

3. Internally, there was fracture of the skull bone on both left and right, going straight into the brain, with bleeding into the brain. According to Dr. Okeke, the cause of death was severe head injury secondary to penetrating head trauma. The post mortem report was produced as P.Exhibit 1, though there was no burial permit for the same.

4. PW2, John Shiteswa testified that at about 2.00 a.m. on 3rd August, 2007, while he and the deceased were asleep in the house, some people among them the accused broke into the house and started attacking the deceased. They then led the deceased out of the house. When he attempted to follow the people who were taking his mother out of the house he (PW2) was cut on the ears by the accused (the court saw a long scar running from the upper part of the cheek to the upper part of the left ear). When the people left with the deceased, PW2 (John) ran to his uncle's home to report the attack. John testified that he knew the accused, also known as KAMO, as a neighbour. He also testified that one of the attackers was his cousin known as Nunje, and another was Donald Echeli, the accused's brother. John testified that he recorded with the police all that he saw on the night of the attack, although he admitted during cross examination that he did not give the alias name of the accused to the police when he recorded his statement; and further that the name Patrick Manane Bukachi was not in the statement. He also admitted during cross examination that his statement did not indicate that it was the accused who cut him on the ears.

5. PW3 was Charles Osale (Charles) who corroborated John's account of what happened on the night the deceased was attacked and killed, save he testified that the deceased was dragged into her sitting room, then she ran back into the bedroom where the assailants followed her and started cutting her up. According to Charles, the accused and Nunje are the ones who cut the deceased. According to Charles, the deceased was left in the house bleeding. According to both John and Charles, the deceased lit the lantern long before the assailants entered the house, thereby saying that there was light in the house during the attack.

6. Gabriel Ang'ila Omung'ala testified as PW4. He did not witness the incident but was informed of the death of the deceased when he was out of the home attending the memorial service of another relative. The prosecution did not call the police officers who investigated the case or arrested the accused.

7. From all the above evidence, I am of the considered view that the prosecution has established a prima facie case to warrant putting the accused person on his defence. At this time, the case need neither be very strong, nor established beyond any reasonable doubt. That stage of proving the case beyond any reasonable doubt is for the next level. See **Bhatt vs. R. [1957] EA 332.**

8. I now call upon the accused to make his defence either by giving sworn or unsworn evidence. If he chooses to give sworn evidence, he may be asked questions both by the court and the prosecution. The accused person may also choose to remain silent and let the court to determine the case on the evidence that is before court.

Orders accordingly.

Ruling delivered, dated and signed in open court today at Kakamega this 21st day of September 2017.

RUTH N. SITATI.

JUDGE.

In the presence of:-

Mr. Jamsumba(present)..... For state

Miss Akinyi for Nandwa.....For accused

.Polycap Mukabwa.....Court Assistant.