

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NUMBER 70 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

WILSON MWANGI GITHINJI.....1ST ACCUSED

SIMON NDAMBARI GATUMU.....2ND ACCUSED

RULING

Wilson Mwangi Githinji, the 1st accused person, and Simon Ndambari Gatumu, the 2nd accused person, are jointly charged with the murder of Grace Njeri Lepas. The particulars of the offence are that on the 11th day of June 2013 at Ngong Township within Nairobi County (*sic*) murdered Grace Njeri Lepas.

The two accused persons were arraigned in court on 25th June 2013 but the plea was not taken on that day. The prosecution sought more time to conclude investigations. The charges were read out to the accused persons on 3rd July 2013. Each pleaded not guilty. For reasons appearing on the face of the court file records the trial against the two did not commence until 1st February 2016 when the prosecution presented witnesses before me and the trial kicked off. In total the prosecution presented a total of sixteen (16) witnesses). At the close of the case for the prosecution, counsels on both sides opted not to submit.

The evidence against the two accused persons is circumstantial. No one saw them committing the crime. All the evidence presented in court shows that the body of the deceased was discovered on 11th June 2013 inside her house in Ngong Town. It was near a bed in the bedroom and was in six pieces. The head had been decapitated. Both hands had been amputated at the shoulders and both legs had been amputated at the hips. A sharp object had been used to cut the body parts into pieces.

The body was discovered by Julius Mulinge (PW6) one of the tenants of the deceased. He had seen the deceased last on Sunday the 9th June 2013. He had wanted to see the deceased to find out how to solve electricity problem that had occurred. He was curious because he had not seen the deceased for three days since that Sunday. His curiosity of wanting to find the deceased led him to her house where he noticed one door to deceased's house was open. He called David Nganga Lepas (PW3) the son of the deceased and informed him. David told Julius to go into the house and find out what was happening. Julius did as requested and stumbled upon the body of the deceased in pieces. He informed David who travelled to Ngong and reported the matter at the Ngong Police Station.

Doctor Dorothy Njeru (PW13), who examined the body of the deceased confirmed to the court that the deceased died as a result of multiple injuries due to sharp force trauma. Her evidence is consistent with the evidence of other witnesses in respect to the state of the body of the deceased.

Investigations led to the arrest of the accused persons. The 1st Accused was found with a mobile phone, Nokia 1280 (Ex. 5), belonging to the deceased. An informer led police to 1st Accused's home in Karatina Nyeri where he was arrested and the phone recovered from him. Both were placed in police custody and after investigations were completed, they were charged with this offence.

I have examined all the evidence adduced against the accused persons. As stated above it is all circumstantial. There is also an element of recent possession of the mobile phone identified as belonging

to the deceased. At this stage of the trial it may not be necessary to explain all the reasons that have led this court to arrive at this decision it is going to make. Suffice it to state that this court finds sufficient evidence to persuade it to make the decision it has arrived at in this this ruling.

Taking into consideration the principles applicable when relying on circumstantial evidence and the doctrine of recent possession and all the evidence tendered, I am persuaded that the evidence meets the threshold set out in various decisions and legal principles for establishing a prima facie case against the two accused persons.

Section 306 (2) of the Criminal Procedure Code provides that:

When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall inform each such accused person of his right to address the court, either personally or by his advocate (if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself; and upon being informed thereof, the judge shall record the fact.

In compliance with this provision of the law it is my finding that each of the accused persons has a case to answer and shall be placed on the defense. Each is hereby informed of his rights under the law as to his defense and shall be required to address the court as to how each wishes to defend themselves and whether they will be calling any witnesses. Orders shall issue accordingly.

Delivered, signed and dated this 20th September 2017.

S. N. MUTUKU

JUDGE