



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 51 OF 2014

REPUBLIC.....STATE

VERSUS

PHILIP KIPSANG MUTAI.....ACCUSED

RULING

The accused **PHILIP KIPSANG MUTAI** 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 5th of January 2014 at Kaptembwo area in Nakuru District within Nakuru County murdered AGNES NGINA”

The accused pleaded ‘**Not Guilty**’ to the charge and his trial commenced on 12/10/2015. The prosecution led by the learned state counsel called only two (2) witnesses in support of their case.

PW1 ALICE NAPEYOR JUMA told the court that on the night of 4/1/2014 she was asleep in her house at Kaptembwo Estate in Nakuru. At 1.00am the watchman woke **PW1** and informed her that there was a problem in the neighbourhood. **PW1** woke up and went to check but saw nothing amiss. She returned to sleep.

The next day **PW1** and one ‘**Jamila**’ were arrested and were placed in cells. After some time they were released from cells.

The accused was then arrested and charged in court for the murder of the deceased.

At the close of the prosecution case, this court must now determine whether the evidence on record suffices to prove a prima facie case.

The deceased in this case is named in the charge sheet as ‘**Agnes Ngina**’. **PW1** told the court that she knew the deceased by the name ‘**Flamingo**’. No evidence was called to prove to the court that this person known as ‘**Agnes Ngina**’ alias ‘**Flamingo**’ is actually deceased. None of the relatives of the deceased has been called to testify. None of the relatives who identified the body to the doctor who performed the autopsy was called as a witness. The court has no evidence to show that this person is actually deceased as alleged.

PW2 DR. TITUS NGULUNGU was the consultant pathologist who produced the report on the autopsy conducted on the body of the deceased. The body was found to have a stab wound on the neck and a fracture on the skull. The cause of death was opined to be ‘**massive blood loss due to injury to the jugular vein due to sharp force trauma to the neck**’. **PW2** produced the post-mortem report as an exhibit **P. Exb 1**.

There was no evidence tendered to prove that the accused was in any way involved in the death of the deceased. No witness who saw the accused in any way attack or assault the deceased was called to testify. Indeed there is no evidence that the accused was at any time, leave alone on the material date, seen in the company of the deceased.

PW1 told the court that she herself saw nothing. She did not see the accused at all on the night in question nor did she see the body of the deceased. **PW1** told the court that it was the police who took her to the scene and showed her where the body of the deceased was buried.

“The next day police brought us back to the plot and showed us where the body of Flamingo was buried. I could not see anything due to the crowd”

The court has not been told how police knew that the body was buried there. On her part **PW1** stated that it was the watchman who woke her

up at 1.00pm and informed her that there was a problem in her neighbour's house. This watchman who was a crucial witness was not called to testify. **PW1** told the court that she herself woke up and went to check at the neighbour's house but she saw nothing.

PW1 also told the court that it was one '**Jamila**' who informed the watchman that accused had killed the deceased. Again this '**Jamila**' who was a crucial witness was not called to testify.

PW1 told the court that initially police arrested her and '**Jamila**' over this murder and placed them in cells. They were later released. It would appear that the police themselves had no idea who had committed this murder.

The prosecution failed to call as a witness in this case the investigating officer. This was a serious omission given the dearth of evidence presented to the court. It is only the investigating officer who can tell the court why he arrested the accused and what link (if any) exist between accused and this crime of murder. As things stand the court has no idea why the accused faces this charge.

It is clear to me that no meaningful investigations were conducted into this matter. There is absolutely no evidence linking the accused to the murder of the deceased. There has not even been an attempt by the prosecution to prove a prima facie case. This entire hearing has been a monumental waste of judicial time.

I find that the accused has no case to answer and I acquit him of this charge of murder. The accused is to be set at liberty forthwith unless otherwise lawfully held.

Dated in Nakuru this 19th day of October, 2017

Maureen A. Odero

Judge