



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 101 OF 2013

REPUBLIC.....STATE

VERSUS

JOHN MBURU NJOROGE.....ACCUSED

RULING

The accused **JOHN MBURU NJOROGE** 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 night of 23rd October, 2013 and 24th October, 2013 at Keriko Farm in Rongai District within Nakuru County jointly with others not before court murdered SAMMY GIKORI WAWERU”

The accused pleaded ‘**Not Guilty**’ to the charge and his trial commenced on 15/11/2016.

PW1 SAMUEL NYARIBO told the court that he was a resident of Salгаа and that he also used to sell chang’aa in his premises. On 23/10/2013 the accused and deceased who were friends came to his home to buy liquor. Both men were drunk. **PW1** had no liquor to sell and he told them so. The two men then began to quarrel over a cigarette which the deceased was smoking. The quarrel degenerated into a fight at which point **PW1** chased both men out of his compound. He and his family then retired to sleep.

The next day **PW1** heard that the body of the deceased had been found lying on the road. An angry mob of villagers came and demolished the house of the witness. **PW1** ran to the nearby police station to seek refuge. It is not clear whether the mob were blaming **PW1** for the death of the deceased or whether they were angered by the fact that **PW1** was selling chang’aa in his compound.

PW2 JAMES MAINA NG’ANG’A told the court that on the material night he was also in the compound of **PW1** drinking. **PW2** stated that whilst there the accused and the deceased began to fight over a cigarette. They began to scuffle and the accused removed his shirt and put off the kerosene lamp. At that point **PW1** chased both men out of his compound. The accused and deceased both left.

The next day **PW2** heard that the deceased had been killed. **PW2** went to the road and saw the body of the deceased lying there in a pool of blood with the head bashed in.

Following the murder of the deceased police commenced investigations. The accused was arrested and was charged with the murder.

The prosecution having closed its case this court is required to analyse the evidence on record with a view to determining whether the prosecution have established a ‘**prima facie**’ case sufficient to warrant calling upon the accused to defend himself.

The fact as well as the cause of death of the deceased are not in any doubt. **PW2** told the court that he saw the body of the deceased lying on the road with the head bashed in. He identified the deceased as ‘**Sammy Kikori Waweru**’.

PW4 DR. TITUS NGULUNGU a consultant pathologist told the court that on 28/10/2013 an autopsy was conducted on the body of the deceased. The autopsy revealed several cuts and bruises on the body of the deceased as well as a skull fracture. The cause of death was opined to be ‘**severe head injury due to blunt force trauma**’. The duly filled and signed post-mortem form was produced in court as an exhibit **P. exb 1**.

In this case there was no witness who saw the accused assault the deceased at all. **PW1** told the court that while in his house the two men only engaged in a scuffle over a cigarette. **PW1** chased them away and both men left his house. The evidence of **PW1** is corroborated by the other witnesses who were present in the house at the material time. **PW2** gave a similar account of events as **PW1** likewise **PW3 LYDIA BOSIBORI** a daughter-in-law to **PW1** and **PW5 WYCLIFFE RABEI** the 13 year old grandson of **PW1** both corroborate the testimonies of **PW1** and **PW2**. All the witnesses state that they only witnessed the accused and deceased engage in a mild physical confrontation. When the two were told to leave the premises they both left. The deceased was alive and well and walked out of the compound of **PW1** on his own two feet.

The next day the badly battered body of the deceased was found lying on the road. Nobody knows how the deceased met his death nor is it known who inflicted the fatal injuries on the deceased. None of the witnesses is able to tell what happened (if anything) between the accused and the deceased **after** they left the premises of **PW1**.

Suspicion for the murder of the deceased fell upon the accused because he had been seen quarrelling with the deceased. However suspicion on its own cannot form the basis for a conviction. In the case of **SAWE Vs REPUBLIC [2003] KLR 364**, the court held

“Suspicion, however strong cannot provide a basis for inferring guilt which must be proved by evidence”.

In this case there exists no direct or tangible evidence to link the accused to the murder of the deceased. The prosecution have failed to establish a prima facie case. I therefore 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 13th day of October, 2017.

Mr. Obutu holding brief for Mr. Mongeri

Mr. Chigiti for DPP

Maureen A. Odero

Judge