



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIAMBU

CRIMINAL CASE NO. 34 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

JOSEPH THIONGO WAWERU.....1ST ACCUSED
HENRY NGUGI KARUGA ALIAS MWENE CIO.....2ND ACCUSED
JULIUS KANYIRI WAMBUI ALIAS KAMURANG'A.....3RD ACCUSED
JOHN NJOROGE GACHO ALIAS NJINALO.....4TH ACCUSED
HARRISON KIBANDE MARUBU.....5TH ACCUSED
JOSEPH MUCHUI MUIRURI.....6TH ACCUSED
BENARD MURIGI KARANJA.....7TH ACCUSED
JOSPHAT MACHARIA MARUBU ALIAS KASEE.....8TH ACCUSED
MARY MUGECHI MBURU ALIAS WAMUGECHI.....9TH ACCUSED
JOSEPH NYAMU KAGO ALIAS KIMANGU.....10TH ACCUSED
PATRICK IKUU MUGO.....11TH ACCUSED
SAMUEL IKUU MUGO.....12TH ACCUSED
PETER MBURU MUNGAI.....13TH ACCUSED
PETER MURIGI NGIGE.....14TH ACCUSED
ZACKARIA NGARUIYA MUTWE.....15TH ACCUSED
JOHN KAMAU KARIUKI.....16TH ACCUSED
SIMON NGUGI GITAHI.....17TH ACCUSED
DAVID MUIRURI CHOMBA ALIAS.....18TH ACCUSED

RULING ON NO CASE TO ANSWER

1. Each of the eighteen (18) Accused Persons faces four counts of murder contrary to section 203 as read together with section 204 of the Penal Code. All the victims of the alleged murders are associated with Kihiu Mwiri Company in Murang'a County. The four counts respects the alleged unlawful killings of Peter Kimani Kuria on 10/05/2016; Paul Muhuhi Bernard on 28/06/2015; Josphat Kibe Nyoike on 29/07/2015; and Zachary Chege Kiraty on 29/07/2015 respectively.

2. The first sixteen Accused Persons had initially been charged in Nairobi before the case was transferred to this Court and the Information amended to add the last two Accused Persons. All the eighteen pleaded not guilty to the substituted Information and the case proceeded to full trial.

3. The Prosecution called seventeen (17) witnesses. The Prosecution's theory of the case is elegantly parsimonious: It is that there were two rival groups engaged in a deadly competition for the control of Kihiu Mwiri Company. One group was led by Peter Kariuki; the other by Peter Kimani Kuria (the Deceased in the first Count). The theory is that the Accused Persons belonged to the group led by Peter Kuria and they embarked on a murderous campaign to cleanse the Kihiu Mwiri Company of the officials belonging to the rival group and their supporters. The allegations are that the Accused Persons participated in the planning or killing of the four persons in each of the counts who were officials aligned to the rival group at Kihiu Mwiri.

4. At this stage in the criminal trial, the Court considers the Prosecution evidence presented as well as any submissions by the Prosecution and the Defence whether the evidence presented warrants putting the Accused Persons on their defence. The task of the Court at this stage in the proceedings is to decide if Prosecution has made out a sufficient case for any or all the Accused Persons to be placed on their defence. The test to be utilised by the Court in making that determination was famously stated in **Bhatt – vs- R [1957] EA 332**. In plain terms, the Court is expected to determine if there is enough reliable evidence to warrant the Court to hear from the Accused Persons or if the case should be stopped at this point.

5. The test was stated in the **R v Galbraith [1981] 1 WLR 1039** thus:

(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a [Court] properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case. (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliabilityand where on one possible view of the facts there is evidence upon which a [Court] could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to [proceed for Defence hearing].... There will of course, as always in this branch of the law, be borderline cases. They can safely be left to the discretion of the judge.

6. After carefully analysing the evidence presented by the Prosecution witnesses, I have easily come to the conclusion that, as a matter of law, the evidence adduced has not led any reliable evidence linking fourteen of the eighteen Accused Persons with any of the murders canvassed in the Information upon which a reasonable tribunal might safely convict upon it. Based on this conclusion, it would be a violation of the rights of these fourteen Accused Persons to allow the trial to proceed. Consequently, with the evidence on record, the Court enters a verdict of "Not Guilty" against each of the following fourteen Accused Persons:

1. Harrison Kibande Marubu

2. Joseph Muchui Muiruri

3. Bernard Murigi Karanja

- 4. Josphat Macharia Marubu Alias Kasee**
- 5. Mary Mugechi Mburu Alias Wamugechi**
- 6. Joseph Nyamu Kago Alias Kimangu**
- 7. Patrick Ikuu Mugo**
- 8. Samuel Njeru Mburu**
- 9. Peter Mburu Mungai**
- 10. Peter Murigi Ngige**
- 11. Zackaria Ngaruiya Mutwe**
- 12. John Kamau Kariuki**
- 13. Simon Ngugi Gitahi**
- 14. David Muiruri Chomba Alias Muchori**

7. It is my duty to acquit these fourteen Accused Persons and I do so under Section 306(1) of the Criminal Procedure Code. They are hereby so acquitted. They shall be released forthwith unless otherwise lawfully held. For the apprehension of embarrassing the defence hearing of the remaining Accused Persons, the Court shall not, at this stage offer exhaustive reasons for this decision.

8. As respecting the remaining four Accused Persons (1st to 4th Accused Persons), taking the Prosecution case at its highest that is, without considering the “weightiness” of the evidence or coming to a definitive conclusion of the reliability of the witnesses, I am of the opinion that the case against them should be allowed to proceed for defence hearing.

9. Consequently, the following four Accused Persons are put on their defence:

- 1) Joseph Thiong’o Waweru**
- 2) Henry Ngugi Karuga Alias Mwene Cio**
- 3) Julius Kanyiri Wambui Alias Kamurang’a**
- 4) Joseph Njoroge Gacho Alias Njinalo.**

10. The case shall be set down for defence hearing for these four Accused Persons.

11. Orders accordingly.

Dated and delivered at Kiambu this 14th day of December, 2017.

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JOEL NGUGI

JUDGE