



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL CASE NO. 12 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

KYALO MUSILI MUSYIMI.....ACCUSED

RULING

1. **Kyalo Musili Musyimi**, “the Accused” is charged with **Murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code (Cap. 63), Laws of Kenya**. Particulars of the offence are that on the **22nd** day of **July, 2008** at **Kamula Sub-location, Mivukoni Location** of **Kyuso District** within **Eastern Province** he murdered **Ndanu Kimanzi Nzou** (Deceased).
2. The deceased an **eleven (11) years old** girl lived with **Muimi Matindi**. On the **26th** day of **July, 2008** her decomposing body was found in a bush some approximately **500 meters** away from where she resided. The police were informed. On arrival at the scene they found members of the public having arrested the Accused. Some exhibits were recovered. Subsequently the Accused was charged.
3. To prove the case the Prosecution called **six (6)** witnesses. PW1, **Alexander Mbaluka Nzou** the father of the Deceased got information about his daughter’s body having been found in the bush.
4. PW2, **Johnstone Muimi Mativo** who lived with the Deceased got the information from his neighbour **Katulu Kakumu**.
5. PW3, **No. 230526 C I Phillip Koskei**, the **OCS, Kyuso** found the Accused having been arrested by members of public. He recovered a machete from members of the public. He recovered a jeans jacket and some other items said to have belonged to the Deceased. On cross-examination he stated that there was nothing scientific to link the Accused to the offence.
6. PW4, **Musili Kakumbo** found the Deceased’s body in the bush and went to report to the village elder.
7. PW5, **Mulyungi Kiteme**, the village elder confirmed having received the report from the village elder.
8. PW6, **Dr. Charles Matheka** of **Mwingi District Hospital** produced in evidence a postmortem report authored by **Dr. Maonga**. According to the autopsy report the cause of death of the Deceased was cardiopulmonary failure due to spinal injury at the Atlas and Axis level secondary to assault.
9. Only the defence filed submissions at the close of the Prosecution’s case which I have duly considered.
10. This is a case where PW3 found the Accused been arrested by members of public. He re-arrested him and recovered some exhibits that were not subjected to examination. He formed the opinion to charge the Accused because he allegedly had a jacket that was blood stained. No evidence was called to establish if indeed the jacket had stains of blood and whose blood it was. No evidence was adduced to establish under what circumstances the Accused was arrested by members of public and how he led the police to the scene of crime for none of the people who arrested him

were called as witnesses to confirm the allegation.

11. In the celebrated case of **Ramanlal Trambaklal Bhatt vs. Republic (1957) EA 334** cited, it was stated that:

“...The question whether there is a case to answer cannot depend only on whether there is ‘some’ evidence irrespective of its credibility or weight sufficient to put the accused on his defence. A mere scintilla of evidence can never be enough; nor can any amount of worthless discredited evidence.”

12. At the close of the Prosecution’s case, there was neither direct nor circumstantial evidence to connect the Accused with the murder of the Deceased.

13. Consequently he has no case to answer and is acquitted pursuant to the provisions of **Section 306(1)** of the **Criminal Procedure Code**

14. It is so ordered.

Dated, Signed and Delivered at Kitui this 17th day of March, 2016.

L. N. MUTENDE

JUDGE