



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL CASE NO. 29 OF 2009

REPUBLICPROSECUTOR

VERSUS

CASTRO LIYAYI MOSOTSI1ST ACCUSED

IDI ISMAEL LONGU2ND ACCUSED

R U L I N G

Introduction

1. The accused persons herein CASTRO LIYAYI MUSOTSI and IDI ISHMAEL LONGU are charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.
2. The particulars of the offence are that the two accused persons on the night of 17th and morning of 18th April 2009 at Kaptien village, Serem sub location, Shamakhokho location, in Hamisi district within Western Province jointly with others not before Court murdered EVELYNE AJERWA KISANYA.

Prosecution Case

3. The prosecution called 7 witnesses among them PW1 Leah Khagali Musambo. The prosecution case is that some of the clothing items belonging to the deceased were found in the home which was shared by the two accused persons. The prosecution also alleged that some blood was also found on the inside wall of the said house and therefore the two pieces of evidence link the two accused persons to the death of the deceased. The prosecution also called Dr. Francis Udira who testified as PW5. He testified on behalf of Dr. Collins Masika. In the opinion of the doctor, the deceased died from transaction of the cervical spinal code as a result of a penetrating wound in the chest and a deep cut wound on the neck.

The Submissions

4. At the close of the prosecution case, Mr. Nyikuli submitted that the evidence on record did not link the accused persons to the murder of the deceased. He further submitted that the accused persons were arrested simply because they were neighbours to the family of the deceased. He argued that such a connection has no place in law. He urged the Court to acquit the two accused persons at this stage.
5. In response, Mr. Omwenga for the State submitted that the evidence on record especially the evidence by PW3. Gerald Musatsi and PW4, Mustapha Long'u directly connects the two accused persons to the murder of the deceased. Mr. Omwenga urged the Court to make a finding that the two accused persons have a case to answer.

The Law

6. The principles to be applied by Courts in determining whether or not an accused person should be put on his defence were set out in the case of **Bhatt –vs- R[1957] EA 332**. The Court of Appeal for Eastern Africa stated that the onus is always on the prosecution to prove a prima facie case against an accused person. The Court went further to state that a prima facie is not made out simply because there is some evidence regardless of its weight or credibility. That the evidence must be such that if the accused person says nothing then the Court properly directing its mind would be ready to convict.

Determination

7. I have carefully considered the evidence of all the 7 prosecution witnesses and I am satisfied that the prosecution has established a prima facie case against both accused persons requiring them to be put on their defence. There is the issue of the deceased's shoe being found in the house occupied by the two accused persons. There is also the issue of blood being found on the wall of the said house. Clearly it appears there is some connection between the deceased's shoe and the blood being found in the accuseds' house.

8. For the above reason, the accused persons are put on their defence in accordance with Section 306(2) of the Criminal Procedure Code. In this regard, the accused may give sworn or unsworn evidence or even choose to say nothing in response to the allegations. If the accused persons or either of them give(s) sworn evidence, they/he may be asked questions both by the Court and the prosecution. In each case, the accused persons have a right to call witnesses.

9. The accused persons may now indicate to the Court how they intend to proceed with their defence.

10. It is so ordered.

Ruling delivered, dated and signed in open Court this 21st day of April 2016.

RUTH N.SITATI

J U D G E

In the presence of:

Mr. Omwenga For State

Mr. Nyikuli - For Accused Persons

Mr. Lagat - Court Assistant