



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

CRIMINAL CASE NO. 38 OF 2015

REPUBLIC.....PROSECUTOR

Versus

GEORGE MWANGI MURIITHI.....ACCUSED

RULING

The accused person herein **GEORGE MWANGI MURIITHI** was charged before this court with the offence of murder contrary to Sections 203 as read with Section 204 of the Penal Code (Cap.63) of the Laws of Kenya.

Briefly it is alleged that the accused on 30th day of July 2015 at Kandisi Area in Ongata Rongai township within Kajiado County, murdered one **VICTOR GICHUHI**.

The accused denied the charge and particulars as set out in the information by the Director of Public Prosecutions. The prosecution called a total of nine (9) witnesses and a bundle of exhibits to prove their case against the accused person.

The evidence by the prosecution was inter alia: that PW5 – mother of the deceased left for work in the early morning on the material day leaving her deceased child under the care of PW6.

In the course of the day at about 1.00 pm the accused went to the house of PW6 and picked the deceased with a promise that he will return him back after lunch.

When PW6 realized it had taken long she decided to telephone the mother PW5. PW5 sought permission from her place of work in order to trace whereabouts of her child. Her first point of call was the house of the accused. She told this court that on arrival the house was locked from outside but through the window she could see accused and deceased lying on the bed. In her testimony PW5 sought help from PW4 to have the door broken in order to gain entry. On entering the house the accused was sweating profusely while the deceased body was lying in the bed with no life. By this time PW5 had raised an alarm which invited other neighbours and the public to gather at the scene. They made arrangement to have them taken to Nairobi Women Hospital. The accused person was treated and discharged at Mt. Sinai Hospital in a semi-conscious condition. As for the deceased he was confirmed dead by the medical officer at Nairobi Women Hospital. A report was made to the police.

PW9 CPL. MWENDA investigated the murder and had witnesses record statements. He confirmed that a postmortem was conducted by Dr. Johasen Oduor who produced postmortem report as exhibit 5.

The police who visited the scene PW3 PC Ngeno had collected some whitish substance in a basin and bottle for analysis at the government chemist. There was also evidence adduced by PW7 Dr. Johasen that

during the postmortem deceased body parts i.e. live, kidney, stomach and blood were extracted for toxicological screening.

According to PW2 – Stephen Matinde a government chemist, the analyses of the samples for the deceased and whitish substance collected by the police from the scene of the murder confirmed existence of organo phosphorus pesticide. In his conclusion the pesticide is harmful to human if ingested.

The investigating officer PW9 Cpl Mwenda who investigated the case told this court that he recommended to the Director of Public Prosecutions that accused be charged with the offence of murder. On consideration of the matter the accused was indicted on 13.8.2015 with the offence of killing the deceased on 30.7.2015 at Kandisi village.

Analysis and the Law:

It is the duty of this court to make a finding at the close of the prosecution case under Section 306 (1) of the Criminal Procedure Code whether or not as the evidence stands a prima facie case has been established by the prosecution. If this court makes a finding in the affirmative then it would proceed to call upon the accused to answer to the charge. In the event that a prima facie case is not made out then this court has no option but to acquit the accused of the charge of murder as provided for under Section 306 (1) of the Criminal Procedure Code.

In case of this nature the prosecution has the duty to prove all the elements of the offence beyond reasonable doubt. The ingredients of the offence of murder which prosecution has to adduce evidence to prove are:

- a. There was death.**
- b. That the death was unlawful or by an act of omission.**
- c. That in causing death there was malice aforethought.**
- d. That the accused was the perpetrator of the murder.**

A prima facie evidence is that evidence that is sufficient to raise a presumption of fact in question unless rebutted. At this stage of the proceedings the prosecution has to prove that the evidence as presented is sufficient to prove each element of the offence against the accused unless evidence to the contrary is presented.

In the case of **UGANDA Vs. MULWA RAMATHAN CR. Case No. 103 of 2008** the court stated thus on proof of prima facie case:

“A prima facie case does not mean a case proved beyond reasonable doubt since at this stage, the court has not heard the evidence of the defence.”

The celebrated case of **RAMANLAL T. BHATT Vs. REPUBLIC [1957] EA 332**. The East African Court of Appeal set out the elements of a prima facie case based on the maximum evidence necessary to create an inference that offence was committed by the accused. The court stated as follows:

“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out, at the close of the prosecution case, the case is merely one which on full consideration might possibly be thought sufficient to sustain a conviction. This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case. Nor can we agree that the question whether there is a case to answer depends 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!!”

The prima facie evidence contemplated in this case is one which is sufficient enough against the accused person on the offence of murder as instituted by the prosecution.

DECISION:

I have considered the evidence by the prosecution witnesses in support of the charge facing the accused. Applying the above principles in the **BHATT** and **MULWA (Supra)**. I am of the view that a prima facie case has been made out against the accused person, to warrant him to be called upon to answer. For the reasons therefore and evidence adduced against the accused I call upon him under section 306 (2) of Criminal Procedure Code to call evidence, address the court or call witnesses in support of his defence. Section 306(2) (3) of the Criminal Procedure Code duly complied with by explaining to the accused his rights at this stage of the trial.

Dated, delivered in open court at Kajiado on 31st day of May, 2016.

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R. NYAKUNDI

JUDGE

Representation

Mr. Ochieng for the accused

Mr. Akula for the Director of Public Prosecutions

Accused present

Mr. Mateli Court Assistant