



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
CRIMINAL MURDER CASE NO. 7 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

DENNIS MUCHIRA MUCHIRI.....ACCUSED

RULING

1. **DENNIS MUCHIRA MUCHIRI**, the accused herein is charged with the murder of EVANSON MUNYI MUCHIRI contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars are that on the 1st day of July 2011 at Karikoine village Njuku sub location, Kirima location Kirinyaga East District within Kirinyaga County jointly with others not before court murdered EVANSON MUNYI MUCHIRI (the deceased).
2. The prosecution summoned a total of 10 (ten) witnesses in support of their case and at the conclusion summed up the evidence through oral submissions stating that they had made out a prima facie case to require the accused to be put to his defence. The arguments put forward by the prosecution was that their case was based on dying declaration made by the deceased which declaration in their view was well corroborated by the evidence of P.W.3, P.W. 4 and P.W. 5 the immediate neighbours who went to rescue him when he screamed for help. Mr. Sitati learned counsel for State submitted that a dying declaration does not require corroboration in law but nevertheless he pointed out that the evidence of P.W. 2 and P.W. 7 corroborated the dying declaration which pointed to the accused person in this case. He submitted that the injuries suffered by the deceased were dire and fell within the meaning of **Section 206A** of the **Penal Code**. He relied on the authority in the case of **R -Vs- Nkuru Gwatia Rukaria [2014] eKLR** which held inter alia that a statement made by a deceased person is admissible as a dying declaration if it is established that it was made by him at a time he was expecting to die and had no hope of living. Mr. Sitati submitted that the deceased in this case died less than 12 hours after making the dying declaration and that he made the statement against the accused person in this case when he had no hope of living.
3. The accused person through Rurige his learned counsel on the other hand held a different view. He contended that the case had not been made out to require the accused to be put on his defence. He submitted that the evidence given by P.W. 1 and P.W. 6 were inconsistent with the evidence of P.W. 3, P.W. 4 and P.W. 5.
4. The accused argued that P.W. 5 did not know who Mr. "Muchira" was when he heard the deceased mentioned him as one of the persons who had attacked him. In his view this evidence was inconsistent with the evidence of P.W. 1 and P.W. 7 who were more categorical that the deceased specifically mentioned the accused here as the person who had attacked him. The accused submitted that this information could have originated from the villagers who informed P.W. 1 and P.W. 7 that the deceased had been attacked. Mr. Rurige further pointed out that none of the witnesses had placed the accused at the scene of crime and cited the case of **R -Vs- Nkuru Gwatia Rukaria [2014] eKLR** where the accused person was seen at the scene of crime leaving

- with arrows. Mr. Rurige argued that the witnesses in that case heard a dying declaration made by the deceased and connected it to the accused who was seen at the scene unlike the situation in this case where he argued that the accused person was not seen. He added that the incident occurred at night and recognition even if it was alleged to have been alone by the deceased could not have been possible in his view. He relied on the case of **R -VS- Edward Kinyua Karimi** where the court held that recognition by dying declaration is not guaranteed and that the same needed to be treated with caution and referred to the case of R- Vs- Choge in that regard.
5. Mr. Rurige faulted the prosecution for leaving gaps in their case and submitted that the state should not expect the gaps to be filled by the accused being placed on his defence saying that the same is not tenable in law. On this score he relied on the case of **RAMANLAL T. BHAT - VS- R (1957) E.A. page 332**. He argued that based on the above the accused in this case had no case to answer.
 6. I have considered the submissions made by both counsels and the authorities cited. It is important to note that at this stage of the proceedings the standards applicable on whether a prima facie case has been made out is lower than the standard on beyond reasonable doubt which applies at the conclusion of the full trial after the accused person has been heard. A prima facie case under **Section 211** of the **Criminal Procedure Code** is made out when at the conclusion of the prosecution case, the evidence adduced is sufficient, in so far as the charge is concerned, to require him to make an answer to it failure to which a court properly directing its mind to the law and the evidence adduced is sufficient to find a conviction.
 7. I have considered the evidence adduced in this case and am satisfied without saying much at this stage for obvious reasons that a *prima facie* case had been made out against the accused person sufficient enough to require him to answer to it. He has a case to answer and that is the finding of this Court.

Dated and delivered at Kerugoya this 30th day of May, 2016.

R. K. LIMO

JUDGE

30.5.2016

Before Hon. Justice R. Limo J.,

State Counsel Sitati

Court Assistant Willy Mwangi

Accused present

Interpretation: English-Kikuyu

Rurige for accused present

Sitati for State present.

COURT: Ruling signed dated and delivered in the open court in the presence of Rurige Advocate for accused and Sitati for State.

R. K. LIMO

JUDGE

30.5.2016