



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CRIMINAL CASE NUMBER 46 OF 2011

REPUBLIC OF KENYA.....PROSECUTOR

VERSUS

NTEGERIO NASIEKUACCUSED

RULING

1. The appellant **Ntegerio Nasieku** was charged with the offence of **Murder Contrary to Section 203** as read with **Section 204** of the **Penal Code**. The particulars are that on the night of **19th/20th day of May 2011** at **Twenty Acres Village Nairege Enkare in Narok North District** within the **Rift Valley Province**, he murdered **Francis Kibuba**.

The prosecution called three witnesses and closed its case. The defence filed its written submissions that there was no case to answer while the prosecution failed to file its submissions.

2. PW1 one **Joseph Kirigi Kotiko** testified that the deceased and the accused were brothers neighbours. On the material date, the 19th May 2011, he was with the deceased at Metro Pub and Nyangusi bar upto 10.00p.m. when he left the deceased. It was his testimony that the accused was not in the bar and he had not seen him. It was only later at night that a brother of the accused, one Markupa went to inform him that the deceased had beaten him due to a money dispute. He did not see the two fighting and had no knowledge of the money dispute. He testified that he did not know who killed the deceased.

3. **PW2 Henry Saruri**, a neighbour of both the deceased and the accused testified that he met brother of the accused, one Markupa about 10.00p.m. on the material day and that he saw the accused and his brother Markupa arguing over money and that he did not see the deceased that night and learned of his death the following morning. It was his testimony that he did not know who murdered the deceased.

4. PW3 was the pathologist, Dr. Titus Ngulungu. Other than having performed the post mortem and prepared a report, he had nothing else to add.

5. The investigating officer one Superintendent Isaac Justus Odumbe told the court that he arrested the accused upon a report that the accused had been arrested by members of the public who suspected that he was the one who had killed his brother, the deceased. He testified that the accused's trouser had blood stains and it was later taken to the Government chemist for analysis to find out whether the accused blood on the trouser matched that of the deceased. He told the court that unless the Government chemist results were availed, he could not say that the accused was the one who murdered the deceased.

6. The prosecution did not call the Government analyst to testify and produce the results of the blood samples taken from the accused's trousers and the deceased. The Government chemist report was not filed with the court.

7. Mr. Maragaia Advocate for the accused in his written submissions urged the court to acquit the accused under **Section 306** of the **Criminal Procedure Code**.

It was his submission that none of the prosecution witnesses saw or witnessed the heinous act on the night of 19th May 2011, that none placed the accused at the scene of the murder. The alleged fight was between the accused person and his brother Markupa as per the testimony of PW1 and not between the accused person and the deceased.

His analysis of the evidence in its totality is that the accused was never placed anywhere near the murder scene nor did anybody witness the act, or any alleged fight involving any of the brothers including the deceased.

It was his submission that the only way the accused could have been placed near the deceased was the report of the Government analyst of the blood samples and since such report was not availed, then the prosecution evidence was mere speculation and not sufficient to warrant him to answer to the accusations.

He urged the court to acquit the accused.

8. I have analysed the prosecution evidence as tendered before me.

None of the prosecution witnesses was an eye witness to the murder, or even witnessed an alleged fight between the accused's brother one Markupa and the accused. It is instructive to note that even the alleged fight did not involve the accused and the deceased. It is not clear at all why the accused person was brought into the fight or the murder. The accused's brother, Markupa failed to attend court to testify. He seems to have had some knowledge as to who may have killed his brother. The police failed to follow this link that would have revealed some important facts about the murder.

His failure to testify was not sufficiently explained and therefore that crucial evidence that may have unravelled the mystery was lost.

The Government chemist too failed to attend court to present his report on the blood samples taken from the deceased and the accused person's trouser.

9. I agree with the defence advocate that the whole prosecution case was based on mere speculation, and suspicion.

The court is unable, from the available prosecution evidence, to place the accused person anywhere near the scene of the murder and the act of murder of the deceased. The circumstantial evidence tendered does not meet the threshold nor does it prove any of the ingredients of the offence of murder. The evidence of all the prosecution witnesses was hearsay.

The arrest of the accused person was not based on any link with the deceased but on mob justice far away from the scene of murder and the basis for his arrest by the mob and the police was not properly laid before the court. The investigating officer testified that without the report from the Government Chemist, he could not positively link the accused to the murder of the deceased.

10. Having so found, the court finds that the evidence before it is insufficient to warrant the accused person to be put on his defence. There is nothing for him to answer as no *prima facie* case was established against him.

For those reasons, I find and hold that the accused is not guilty of the offence of murder and is accordingly acquitted under **Section 306** of the **Criminal Procedure Code**. He is set at liberty from custody unless otherwise lawfully held.

Dated, signed and delivered in open court this 25th day of May 2016.

JANET MULWA

JUDGE