

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 32 OF 2014

REPUBLICPROSECUTOR

VERSUS

NICHOLUS MWAMBILI MBOGO.....ACCUSED

RULING

Nicholus Mwambili Mbogo, the accused, is charged with murder contrary to section 203 as read with section 204 of the Penal Code. Particulars of the offence are that on the 12th April 2014 at Mukuru Kwa Njenga Slums within Embakasi Division in Nairobi County he murdered Dorothy Wanza Hassan.

Nine witnesses have testified for the prosecution and at the close of the prosecution case this court was told in submissions that the evidence establishes a prima facie case against the accused person. I was asked to find that the accused has a case to answer and to place him on his defence. Counsel for the accused Mrs. Nyamongo submitted a-no-case-to-answer on behalf of her client. She submitted that none of the prosecution witnesses gave an eye witness account of what happened; that the deceased stormed into the house where the deceased lived and it is not known how she did this; that the chopping board said to be the murder weapon is a common household item and it was not dusted for fingerprints or examined to determine whether the blood allegedly found on it was deceased's blood or blood of an animal given that it is used for chopping meat on and that there was no evidence to show whether the chopping board was broken on the day of the incident or the previous day. Counsel submitted that the evidence is insufficient to place the accused on his defence.

The accused and the deceased were living as man and wife although their union, according to the father of the deceased Hassan Matsila Chumo (PW4), had not been formalized. They had separated and the deceased had gone to live with her parents who lived nearby. On 12th April 2014 around 7.30pm the deceased told her father that she was going to Villa Police Post to report in regard to a child that the accused had taken from her. She delayed in returning and her father got concerned. While her father was waiting for her to return, two children went to his home and reported to him that the accused and the deceased had killed each other in their house. He went to the scene where he found the deceased lying down in the bedroom with serious head injuries. The accused was not in the house.

Further evidence shows that around 9.00pm on that day, Rosalia Mwikali (PW2) who lived in house number 015 heard an unusual banging sound from the neighbouring house number 016 occupied by the accused. Rosalia knew the accused as the tenant in that house after moving into it from another house. She went out and told a neighbour about the banging and returned to her house. Information on what was happening in accused's house reached Festus Mwanja (PW1) who was the chairman of the plot's welfare committee. He called Cosmas Mutua (PW3) the caretaker. They went to the accused's house and found it locked from inside. They could not gain entry. Cosmas used an umbrella to break open the door. They entered the house. They found no one in the sitting room. They entered the bedroom whose door was not locked and found the deceased lying on the floor dead. She had head injuries which had bled to the floor. The accused was also lying on the ground facing down. Festus said the accused was holding a bottle of pesticide in his hand. He was not dead.

Cosmas went to report at Villa Police Post. He returned with the police. They found the accused had been taken to hospital. The police took photographs of the scene and removed the body to the mortuary. The accused was arrested and after investigations, he was charged with this offence.

I have examined the evidence so far tendered. As submitted by Mrs. Nyamongo, there is no eye witness to what happened. By the time neighbours arrived at the scene the deceased was dead. The door of accused's house was locked and people could not gain access. They had to break open the door. This case therefore rests wholly on circumstantial evidence. The injuries on the body of the deceased were extensive and the doctor confirmed cause of death was due to head injury due to blunt force trauma. There was no other person in the house and there is no evidence that there had been anyone else save the accused and the deceased. The accused was alive while the deceased was found dead with grave injuries. I am satisfied that the circumstances of this case point to the culpability of the accused in the death of the deceased. Consequently, I find that a case has been established on which this court, while properly directing its mind to the law and the evidence, could convict if no explanation is offered by the defence with the result that the accused person has a case to answer. This court informs him of his right to address the court on the manner he wishes to defend himself and whether he will call any witnesses to his defence. It is so ordered.

Dated, signed and delivered this 17th day August 2016.

S. N. Mutuku

Judge

In the presence of:

Ms Macharia for the prosecution

Mrs. Nyamongo the defence counsel

Mr. Nicholus Mwambili Mbogo, the accused

Mr. Daniel Ngumbi, court clerk