



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 88 OF 2013

REPUBLICRESPONDENT

VERSUS

JOSEPH KINYUA MWANGI1ST ACCUSED

BERNARD NJUGUNA MWANGI2ND ACCUSED

RULING

The two accused persons namely **JOSEPH KINYUA MWANGI** (hereinafter referred to as the 1st accused) and **BERNARD NJUGUNA MWANGI** (hereinafter referred to as 2nd accused) jointly face a charge of **MURDER CONTRARY TO SECTION 203 as read with SECTION 204 OF THE PENAL CODE.**

The particulars of the charge were that

“On the 7th day of September, 2013 at Bahati Trading Centre in Nakuru North District within Nakuru County jointly murdered JORAM MURUGA KARANJA”

Although the two accused person were arraigned in court on September 2013, in the period of three (3) years the prosecution only managed to avail two (2) witnesses to testify in this case. This is even more scandalous given that the case was being handled by Bahati Police Station within Nakuru Town.

PW2 HESBON MUIGAI was a brother to the deceased. He has no idea how the deceased met his death as he was not present at the time

PW1 SAMUEL KARANGIRA KARIUKI told the court that on the material day he was in Joyland Bar with the deceased and others. At about 7.30pm the deceased left the bar and the 2 accused and others followed him.

PW1 then heard a commotion outside the bar. He rushed out to check and found the deceased lying dead a few meters from the bar.

PW1 did not see anyone fighting with the deceased. He did not see anyone kill the deceased. **PW1** did not find any knife in the scene. Out of the men who followed deceased out of the bar **PW1** had no idea

which one fatally wounded the deceased. **PW1** claims that a watchman whom he names as '**Emana**' told him that deceased had fought with the 1st accused. **PW1** did not himself witness this fight. The said '**Emana**' was never called as a witness in the case. Therefore this remains hearsay evidence which is not admissible in evidence.

PW2 the brother of the deceased informed the court that he witnessed the post mortem examination on the body of the deceased. No doctor was called to testify regarding this autopsy. No post mortem report was produced as an exhibit. As such the cause of death of the deceased remains unproved. This court cannot tell whether the deceased met his death as the result of culpable homicide or due to other causes.

All in all the prosecution have failed dismally in proving a *prima facie* case. No real effort was made to secure the attendance of witnesses, despite the prosecution being allowed numerous adjournments to do so. Due to lack of sufficient evidence no *prima facie* case has been shown. I enter a verdict of '**Not Guilty**' and I hereby acquit both accuseds of this charge of murder.

The two accused persons to be set at liberty forthwith unless they are otherwise lawfully held.

Dated in Nakuru this 30th day of September, 2016.

Mr. Ombati for Accuseds

Mr. Chigiti for State

Maureen Odero

Judge

10/10/2016