



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**  
**CRIMINAL MURDER NO. 10 OF 2014**

**REPUBLIC.....PROSECUTOR**

**AND**

**PETER NJUE KAMAU.....ACCUSED**

**RULING**

1. **Peter Njue Kamau** is the accused herein facing murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars are that on 24<sup>th</sup> February, 2014 along Haiti Ndomba within Kirinyaga County, he caused the death or killed David Muthii Gichina (deceased). The accused herein denied the offence and the case proceeded on trial pursuant to **Section 208** of the **Criminal Procedure Code** where the prosecution has called a total of 10 (ten) witnesses in support of their case.
2. At the close of the prosecution case, the defence and the prosecution expressed the desire to make written submissions about the case facing the accused in accordance with **Section 210** of the **Criminal Procedure Code** and this Court allowed both sides to make their written submissions.
3. On the part of the prosecution, it was submitted that the prosecution had established circumstantial evidence pointing to the accused person's involvement in the murder of the deceased in this case. The circumstances pointed out are that the phone belonging to the deceased in this case was recovered and traced to the accused person. The prosecution submits that the evidence of Daniel Mugendi Nthiiri (P.W.1) provides the nexus between the recovered phone and the accused person and this establishes that the doctrine of recent possession applies against the accused person. The prosecution urges this Court to put the accused person on his defence based on the same.
4. On the defence part, the defence counsel submits that the prosecution has not made out a *prima facie* case to warrant the accused being put on his defence. The accused has argued that Daniel Mugendi (P.W.1) did not produce any agreement or any other evidence to prove that there was a transaction between him and the accused person. It is also contended that there was no time the accused ever used the stolen phone going by the data provided by Safaricom. It is also submitted that there is no reason given by the prosecution witnesses why the accused was called to Nice City instead of Daniel Mugendi's shop.
5. The defence also faulted the Police for not dusting the motor vehicle belonging to the deceased for finger prints to assist with the investigations. It is further contended that the Police could have carried out the DNA on the blood samples found in the recovered car and also look for the owner of the phone recovered on the scene of crime contending that the phone recovered must belong to a person connected with the crime and that that person is not the accused herein.
6. The accused in his submissions accused P.W. 1 Daniel Mugendi for pointing at him as a scape goat as

he could not otherwise explain how he obtained the stolen phone. It is contended that the prosecution case left so many loopholes and that the accused person should not be expected to fill the gaps left out as the prosecution has a burden of proof. The defence has relied on the decision in the **Court of Appeal Criminal Appeal No. 442 of 2007 between Rashid Thomas -Vs-Republic [2008] eKLR.**

7. I have considered the evidence adduced by the prosecution and submissions made by both counsels in this case. At this stage of the proceedings, this Court is required and is expected to assess the evidence adduced to see if the same on its own is sufficient to find the accused guilty if no other explanation in rebuttal is offered. The standard applicable at this stage is slightly lower than beyond reasonable doubt which standard is applicable at the conclusion of a defence case. So what is a *prima facie* case? A *prima facie* case presupposes that the prosecution has established a rebuttable presumption that the accused is connected with the commission of the crime. The prosecution in law is therefore required to adduce evidence that raises a presumption of course subject to further interrogation that the defendant is connected or involved in the crime. Looking at the evidence laid before me I am satisfied that the prosecution has established a *prima facie* case sufficient enough to put the accused person herein to his defence. He has a case to answer.

*Dated and delivered at Kerugoya this 26<sup>th</sup> day of September, 2016.*

**R. K. LIMO**

**JUDGE**

26.9.2016

**COURT:** At 2.30 P.M.

Coram as before but Ndana Advocate absent.

Ndana walks in

**COURT:** Ruling signed, dated and delivered in the presence of Sitati and

in the presence of Ndana Advocate for the appellant.

**R. K. LIMO**

**JUDGE**

26.9.2016