



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**CRIMINAL CASE NUMBER 89 OF 2011**

**REPUBLIC OF KENYA.....PROSECUTOR**

**VERSUS**

**DANIEL KIPCHUMBA KIPKECHO .....ACCUSED**

**RULING**

1. The accused, Daniel Kipchumba Kipkecho was charged with the offence of **Murder Contrary to Section 203** as read with **Section 204 of the Penal Code**. He is alleged to have murdered one Dickson Kipkitur Kipkecho on the 27<sup>th</sup> November 2011 at Tuyotich farm, Solai in Rongai District within Nakuru County.

2. The prosecution called four witnesses. PW1 was Millicent Cheptui, the widow of the deceased. She testified that on the fateful night, the accused's wife came to their house and soon after the accused came and asked her why she had informed their father that the two had disagreed, and she left after abusing her husband. Soon thereafter, the accused left and she followed him as it was at night. While following, it was her testimony that she heard a sound purportedly of the deceased asking why accused was killing him and she hid in the bush upto the following morning when she was informed of her husband's death. She did not see the accused kill the deceased nor did she visit the scene of the crime. She told the court that the two brothers had no enmity. When asked why her statement recorded at the police station differed from the evidence in court, she stated that she could not remember. She further testified that she did not know who between the accused and deceased started the dispute but only stated that she heard her deceased husband's voice asking the killer why he was killing him.

3. PW2 was Dr. Titus Ngulungu, a Consultant Pathologist at the Nakuru Provincial Hospital. He performed a postmortem on the body of the deceased on the 5<sup>th</sup> December 2011. He prepared a report that he produced as PExhI. He formed the opinion that the cause of death was severe chest, abdominal and vascular injuries from multiple stab wounds from a sharp force.

4. PW3 was Gladys Kipkecho, a sister to the deceased, and the accused, She testified that on the 27<sup>th</sup> November 2011 at about 7.30 p.m. she heard voices from the deceased's house but it subsided that the deceased's wife was saying people have killed each other. She was at her mother's house. She later went to the deceased's house and found him at the door of his house dead. She testified that she did not know the relationship of her two brothers as she used to be in school.

5. PW4 was a police officer then stationed at Solai police station, Chief Inspector of police John Kinyua. He was the investigating officer. He visited the scene of crime and found the deceased's body with stab wounds on the chest and stomach. From interrogation of family members of the deceased, the accused was said to be the suspect. A *panga* and stick were recovered next to the deceased's body and at a

distance a pair of trousers with blood stains was also recovered. He later had the accused arrested and taken to the police station where it was alleged he confessed to the murder due to a family dispute. He was later charged with the offence of murder. On cross examination, the investigating officer stated that he later found out that the two brothers had money dispute and that the brothers wives had differences, and that the only witness who talked about a fight between the two brothers was wife of the deceased, who also told him that the deceased was drunk.

6. The investigating officer further stated that the items found at the scene of the accident the *panga* and stick had no blood stains, and that the blood stained trouser was taken to the Government analyst whose report did not link the accused to the murder, as the blood on the trouser did not match the deceased's blood.

It was his further testimony upon cross examination that the deceased's wife (PW1) testimony did not connect the accused to the murder of the deceased. When asked how he conducted the alleged confession by the accused, he stated that the did not follow the correct procedure while taking it.

7. The prosecution closed it's case without calling the government analyst to produce his report on the blood samples on the recovered blood samples on the recovered blood stained trouser that in any event were negative. The court was told the arresting officer was deceased.

8. The court has evaluated the prosecution evidence as tendered before it. None of the four witnesses were eye witnesses to the murder.

The investigating officer recovered a *panga* and a stick near the deceased body but stated that they had no blood stains.

The blood stained trouser recovered a distance from the body was examined ad the Government chemist. The report was not produced in court but was said to have been negative. The investigating officer could not link the accused person to be murder as no direct evidence was tendered.

9. In the case **Ramanlal Trambaklal Bhatt -vs- Republic (1957) EA 334** it was stated that:

***“the question whether there is a case to answer cannot depend only on whether there is some evidence irrespective of its credibility or weight sufficient to put the accused on his defence. A mere scintilla of evidence can never be enough, nor can any amount of worthless discredited evidence.”***

The only witness whose evidence of enmity and a fight between the two brothers came out was by the deceased's wife. The investigating officer established that the two wives of both the deceased and the accused had family differences. This evidence is therefore suspect, and cannot be the basis upon which a case could be established. No corroborative evidence was tendered.

11. In my view, there is no enough evidence, direct or circumstantial that could connect the accused to the murder of the deceased.

See **Republic -vs- Kyalo Musili Musyimi (2016) e KLR** where the court acquitted the accused in similar circumstances the basis upon which a case could be established. No corroborative evidence was tendered.

See **Republic -vs- Kyalo Musili Musyimi (2016) e KLR** where the court acquitted the accused in similar circumstances.

12. In the circumstances, the court finds no sufficient and credible evidence upon which the accused could be placed on his defence. He is acquitted under the provisions of **Section 306(1)** of the **Criminal Procedure Code**.

**Dated, signed and delivered in open court this 22<sup>nd</sup> day of September 2016.**

**JANET MULWA**

**JUDGE**