



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA

CRIMINAL MURDER NO. 6 OF 2014

REPUBLIC.....PROSECUTOR

AND

PETER NJUE KAMAU.....ACCUSED

RULING

1. **Andrew Njagi Gichobi** has been charged with the murder of George Njogu Wanja contrary to **Section 203** as read with **Section 204** of the Penal Code. The particulars on the information presented to this Court provides that on the 6th February, 2010 at Mwambao village of Kanjuu sub location, Kirinyaga East District within Kirinyaga County murdered **George Njogu Wanja**. The accused herein denied the charge and case proceeded on trial where the prosecution called a total of six witnesses to prove its case against the accused.

2. At the close of the prosecution case both the prosecution and defence expressed their desire to make written submissions concerning the case pursuant to **Section 210** of the **Criminal Procedure Code** which wishes were granted by this Court.

3. The prosecution on its part through written submissions submitted by E.P.O. Omayo, learned counsel from the Director of Public Prosecutions submitted that the evidence tendered through P.W.1, Antony Muriuki indicated that the accused herein hit the deceased with an object after a quarrel of Kshs.50 which the accused owed the deceased. Mr. Omayo submitted that P.W.6 (Dr. Gatangi) confirmed that the severe head injury caused by a heavy blow to the forehead caused the death of the deceased. He further contended that failure to summon one Mr. Ndungu as a witness was because he could not be found and that the prosecution case against the accused was buttressed by the fact that the accused herein disappeared from his home immediately after the said offence was committed and only resurfaced in 2014 when he was arrested to face the charge now before court.

4. The defence on its part through written submissions by defence counsel Bwononga & Co. Advocates submitted that no case has been made out against the accused. The defence has contended that the prosecution failed to call a material witness one Mr. Ndungu and contended that this Court should make an inference that Mr. Ndungu would have tendered adverse evidence against the prosecution had he been summoned to testify.

5. The defence counsel has further submitted that there is no sufficient evidence tendered in this case to warrant the accused being put on his defence and that even if the accused was to choose to remain silent there was no ground upon which this Court would reasonably convict the accused.

6. This Court has considered submissions by both counsels and the evidence against the accused herein. It is important to note that at this stage of the proceedings this Court is required and is expected to assess

the evidence tendered by the prosecution and determine if the same on its own is sufficient to find that the accused is guilty if no other explanation in rebuttal is offered. The standard applicable at this stage is slightly lower than beyond reasonable doubt which in my view is the standard that applies at the conclusion of hearing both the prosecution and defence case. The prosecution is required under **Section 211** of the **Criminal Procedure Code** to make out a prima facie case against the accused person. A *prima facie* case presupposes that the prosecution has established a rebuttable presumption that the accused is connected with the commission of the crime. I have considered the evidence tendered and though I do not agree with the prosecution's submissions that there was altercation between the accused and the deceased over a debt of Kshs.50 because no evidence was tendered before this Court to back it up, I have noted the defence submissions concerning failure by the prosecution to summon one Ndungu who was said to have been with the deceased shortly after he was seriously assaulted. It is a fact and true that the prosecution should have done a better job by availing the said witness to shed light on what transpired.

7. This Court has however, considered other aspects of the evidence tendered, particularly on what Julieth Wanja Sammy (P.W.2) and Cpl Geoffrey Mungathia (P.W.6) told this Court in regard to what the deceased told them was responsible for the injury on his head. That evidence coupled with the evidence of Scolastica Wacera (P.W.3) and Dr. Andrew Kanyoni Katangi (P.W.5) in my considered view established a *prima facie* case or made out a case against the accused person herein sufficiently to require him make a defence. He has a case to answer.

Dated and delivered at Kerugoya this 25th day of October, 2016.

R. K. LIMO

JUDGE

25.10.2016

Before Hon. Justice R. K. Limo J.,

State counsel Mr. Omayo

Court Assistant Naomi Murage

Accused present

Interpretation English/Kikuyu

Miss Magara for accused present.

Omayo for State present.

COURT: Ruling dated, signed and delivered in the open court in presence of Marage (Miss) for the accused and Mr. Omayo for the state/Respondent.

R. K. LIMO

JUDGE

25.10.2016