



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO.66 OF 2013

REPUBLICPROSECUTOR

VERSUS

ERICK IMMBWANGA EKESA.....ACCUSED

RULING

1. The accused is charged with murder contrary to Section 203 as read with 204 of the Penal Code. Particulars of the offence are that on the 25/12/2013 at Makaburini village, Municipality sub location in Kakamega County, the accused herein murdered Mohammed Mokoya. The accused pleaded not guilty to the charge. The Prosecution have called four (4) witnesses who included Dr. Dickson Muchana who produced the Post mortem report.
2. The 4 Prosecution witnesses were Joseph Njuguna who testified as PW1. He is a shopkeeper within Kakamega town. Rahab Muthoni testified as PW2, while number 75979 Sgt Samwel Menganyi testified as PW3. PW4 was Dr. Dixon Mchana Mwaludindi who told the Court that the deceased died from extensive dry heat. He produced the post mortem report as PExhibit 1.
3. At the close of the Prosecution case, Mr. Shifwoka, Counsel for the accused submitted that the Prosecution had failed to establish a prima facie case which would warrant the accused person being put on his defence. He submitted that the evidence of both PW1 and PW2 did not support the Prosecution's allegations that the accused person poured paraffin on the deceased. He also referred to the evidence of PW3 who was the Investigating officer and submitted that the Investigating officer did not place his finger on any evidence linking the accused person to the offence. Counsel urged the Court to acquit the accused at this stage.
4. Mr. Omwenga, Counsel for the State on the other hand submitted that the evidence adduced by the Prosecution is sufficient to warrant putting the accused person on his defence. He submitted that the evidence of PW2 clearly shows that the accused person herein poured some paraffin on the deceased's shirt and lit it upon which a big fire exploded. It was Mr. Omwenga's submission that the evidence of PW1 and PW2 was that of independent witnesses which offered the requisite corroboration.
5. In reply, Mr. Shifwoka submitted that PW2 having denounced his evidence the Prosecution cannot seek to rely on such evidence. He submitted further that the accused's mere presence at the scene cannot be used as evidence connecting him to the offence.
6. I have carefully analyzed the evidence that is before Court. I have also carefully considered the rival submissions by Counsel and the conclusion I have reached is that the Prosecution has established a prima facie case requiring the accused person to be put on his defence. I proceed to do so. I am satisfied that if the accused elects to say nothing in his defence the available evidence, if properly analyzed could lead to a conviction.
7. In the circumstances, the accused may give sworn or unsworn evidence. In the former case, he

will be asked questions both by the Prosecution and the Court. He may also elect to remain silent and let the Court decide the case on the evidence that is before it. In each case, the accused may call witnesses.

8. The accused may now make his election as to how he intends to proceed with his defence.
9. Orders accordingly.

Ruling delivered, dated and signed in open Court here at Kakamega

on this 29th day of October 2015.

RUTH N. SITATI

J U D G E

In the presence of:

Mr. Omwenga (present) for State

Mr. Shifwoka (present) for Accused

Mr. Okoit - Court Assistant