



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL CASE NO. 53 OF 2009

REPUBLIC:: PROSECUTOR

VERSUS

JOSEPH KOMEN SUTER:: ACCUSED

RULING

The accused person, JOSEPH KOMEN SUTER, was charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code. He is said to have murdered Joseph Kipkilteret on 23rd September, 2009, at Saito Village in Kapngetuny Location of Uasin Gishu District.

The prosecution closed its case after calling six (6) witnesses.

There is ample proof that JOSEPH KIPILTERET is dead. The doctor who conducted the post-mortem examination on the body ascertained that the cause of death was shock due to excessive bleeding, due to a penetrating stab wound.

According to the doctor the injury may have been caused by a sharp object, such as a knife.

The person who identified the body of the deceased was Suter Kibowen, who is a brother to his father.

None of the prosecution witnesses saw the accused committing the offence. Therefore, all the evidence tendered was circumstantial.

However, there is evidence that the accused personally told two of the prosecution witnesses that it is he who killed the deceased.

The accused discounts that evidence as inadmissible because the same cannot be deemed to constitute an admissible confession. The admissibility of the evidence was described as wanting because the persons to whom the alleged confessions were made, were not mandated, by law, to take confessions.

The accused also pointed out that the prosecution witnesses made it clear that there appeared to have been a fight, when the accused and the deceased were drunk on alcohol.

In those circumstances, there should have been an indication as to who started the fight. I understand the accused to be saying that it was the deceased who attacked him first, resulting in the accused defending himself.

If the accused concedes that there was a fight between him and the deceased, as alluded to in his submissions, he appears to be confirming the evidence which had placed him at the scene of crime, at at

the material time.

But whether or not there is such a concession, the fact is that the evidence on record appears to place the accused squarely at the scene of crime.

He then volunteered information, to the effect that he had killed the deceased. And when the police visited the scene, they verified the fact that the deceased had been killed.

The accused told the police what had happened, and the facts established the truth about the information he had provided.

In the circumstances, it is clear that there is sufficient evidence on record to warrant putting the accused on his defence.

It is only when he does so, that he may, if he so wishes, advance either the defence of self defence, or drunkenness.

If such defence does not displace the evidence adduced so far, the court may convict the accused. Therefore, I do find and hold that the accused has a case to answer.

DATED, SIGNED AND DELIVERED AT ELDORET

THIS 29TH DAY OF APRIL, 2014

FRED A. OCHIENG

JUDGE