



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 59 OF 2009

REPUBLIC

VERSUS

MUITHYA MUEMA ACCUSED

RULING

The accused, **Muithya Muema**, was charged with the offence of murder contrary to **section 203** and **204** of the **Penal Code**.

The particulars of the offence were that on the 18th day of February 2009 at **Kyaani Market, Kasini Sub-Location, Kithumula Location Kitui District** within the **Eastern Province** jointly with others not before court murdered **Boniface Kimanzi Kivindyo**.

The prosecution called a total of eight witnesses in support of their case. The case for the prosecution is that on the material day, the deceased left home at about 5.00 p.m. and proceeded to his bar business at **Kyaani Market** in **Kitui**. The deceased prior to leaving home informed his wife, PW3 **Ndimu Mukova** that he had received death threats but he would reveal the details to her later in the evening when he returned home. However, by the time the wife went to bed the deceased had not returned home. The following morning the wife telephoned the deceased but there was no response. The wife telephoned a neighbour, PW2 **Willie Kathoka** and asked him to go to the bar of the deceased to find out if the deceased had slept there as he used to do that sometimes. PW2 proceeded to the bar. The body of the deceased was found lying in a pool of blood on the floor.

A report was made to the area chief and to the police. The scene was visited and investigations commenced. Among the witnesses who recorded statements were PW5 **Augustus Mwindu Kivinga** who is a neighbour at the bar of the deceased and had seen the deceased at the bar on the material day at about 6.00 p.m.

PW4 **Charles Muema**, PW6 **Katula Muema** and PW7 **Ngase Muema** the brothers to the accused and PW7 **Ngase Muema** the mother to the accused testified only on the arrest of the accused. A confession statement said to have been recorded from the accused by PW8 **Superintendent Edwin Kamau** was not produced in court as PW8 was stood down on grounds that the said statement was not availed by the Investigating Officer who was said to be on sick leave. An application for adjournment sought by the prosecution was not successful and the prosecution case was closed at that stage.

The defence counsel made written submissions on a no case to answer. The prosecution in their reply relied on the evidence on record. The trial began before **Kihara Kariuki, J** (as he then was) and later before **Asike Makhandia, J** (as he then was). I took over the case at the stage of the submissions following the close of the prosecution case.

I have evaluated the evidence of the witnesses herein. There is no iota of evidence that connects the accused to the offence. None of the witnesses gave any direct or circumstantial evidence that points at the guilt of the accused. The confession statement alluded to was not produced. The arresting officer and the investigating officer were not called to testify to shed light to the court on why the accused was arrested and charged.

The postmortem report was not produced to support the evidence of death in the circumstances stated by the prosecution witnesses who have testified herein.

The prosecution evidence failed to prove the fundamental elements that constitute a crime of murder, that is, death, unlawful act or omission that caused the death and malice aforethought. No motive was established why the accused would have wanted to perpetrate the offence herein. Sadly for the deceased, he died before he could disclose the names of the people who had threatened to kill him.

With the foregoing, my conclusion is that the prosecution has failed to establish a *prima facie* case against the accused.

Consequently, the accused is acquitted.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 23rd day of July 2013.

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JUDGE