



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CRIMINAL CASE NO. 110 OF 2009

REPUBLIC..... PROSECUTOR

VERSUS

JOHN MAINA NYAMBURA1ST ACCUSED

JULIUS CHERUIYOT NG'ETICH 2^N ACCUSED

RULING

The accused, **JOHN MAINA NYAMBURA** and **JULIUS CHERUIYOT NG'ETICH**, were charged with the offence of murder, contrary to **section 203** as read with **section 204 of the Penal Code**.

The particulars of the charge sheet are that on 28th October 2009, the accused persons, jointly with others not before the court, unlawfully murdered **LEONARD KIBET NG'ETICH**.

The prosecution called 10 witnesses. Through those witnesses, it is clear that Leonard Kibet Ng'etich is dead. The pathologist who performed the post-mortem examination on the body of the deceased testified that the cause of death was severe head injury secondary to blunt force trauma.

The evidence indicates that the deceased was found inside a pit which was about 20 feet deep.

The deceased appears to have caused some commotion at a bar, which sold chang'aa. He is said to have hit a bar-maid using a stick. When the bar-maid cried out in pain, some patrons in the bar went to her rescue.

When the deceased saw the patrons approaching, he ran out, leaving behind the stick which he had used to hit the bar-maid.

The 1st accused was said to have been amongst the customers who chased the deceased.

The 2nd accused was the owner of the bar, from where the deceased was chased out. When he heard the commotion, he joined those who pursued the deceased.

A little while later, the 2nd accused returned to the bar, saying that they had left the deceased in a gutter.

The 1st accused allegedly told those who were in the bar when he returned, that none of them should tell the police that the deceased had been left in a gutter.

The prosecution witnesses said that the 1st accused told the patrons that even if questions were asked, they should not reveal that the deceased had been chased out of the bar and been thrown into a ditch.

Shortly after that incident, the 1st accused not only moved houses, but also relocated from Nairobi to Kipkelion.

As the pathologist said that the injuries suffered by the deceased were more akin to those of a person who was thrown into a ditch, rather than a person who simply fell into such a ditch; and because the accused persons appeared to know soon after the incident, that the deceased had been thrown into a ditch, I find that the prosecution has established a prima facie case against the accused.

Accordingly, I find that the accused both have a case to answer.

Dated, Signed and Delivered at Nairobi, this 2nd day of April, 2012.

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FRED A. OCHIENG
JUDGE