

REPUBLIC OF KENYA

IN THE HIGH COURT

AT MALINDI

Criminal Case 33 of 2010

REPUBLICPROSECUTOR

VERSUS

KATANA KARISA MANGIACCUSED

JUDGMENT

1. At the close of the prosecution case, eleven witnesses had testified. None of them witnessed the attack in which Rodgers Kaingu Mwanyale received fatal injuries. It would appear however, that there was bad blood between the deceased and the accused arising out of a land dispute. Before his death, the deceased suspected that the accused had a hand in a previous attack at his home by thugs.

2. The father of the accused who testified as PW7 recalled an incident which allegedly occurred at his home some two weeks prior to the murder of the deceased. He claimed that the accused and his son had assaulted him and indeed nearly drowned him in a nearby river. The witness said that the accused had demanded money from him so that he could hire thugs to kill the deceased.

3. There is contradictory evidence as to whether the deceased could speak or not after the attack on 30th September, 2010 which eventually took his life. However, it is alleged that the deceased named the accused as a possible suspect in the attack. In the words of the witnesses, the deceased said that if he was not attacked by the accused, then the accused knows who attacked him. That is hardly a dying declaration in the true sense of the word.

4. It appears to me upon considering all the evidence that there existed circumstances that strongly cast suspicion on the accused as the person who murdered the deceased. However, the suspicion does not amount to evidence capable of sustaining prima facie proof of the charge. If the accused was asked to defend himself against such weak evidence and opted to remain silent, the court would have to acquit him.

5. For the reasons given, I must return a finding that the prosecution case falls below prima facie standard and acquit the accused under section 306 (1) of the Criminal Procedure Code.

6. However, I am disturbed by the allegations carried in the evidence of PW2, PW4 and PW7 regarding a brutal attack on PW7 in which it is claimed the accused and another not before the court even attempted to drown PW7 in a river. It does not appear that the matter has been investigated by the police.

7. I direct that the accused be handed over to the OCS Malindi upon release from custody, for purposes of investigations and possible charges being filed against him regarding the alleged attack on PW7.

Delivered and signed at Malindi this **13th June, 2012** in the presence of the accused, Mr. Otieno for him, Mr. Naulikha for the State, cc Evans.

C. W. MEOLI
JUDGE