



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 29 OF 2006

REPUBLIC.....PROSECUTOR

VERSUS

SILAS MWITI.....ACCUSED

RULING

The accused is charged with murder contrary to Section 203 as read with S.204 of PC. H is alleged to have murdered **AYUB KIRIMANIA** on 7TH April 2006 at 7.30 p.m at Kijijono village Katheri Sub-Location in Meru Central District.

The accused is a son of the deceased. The prosecution called 5 witnesses. PW1 was wife of deceased and mother of the accused. She was present at the home preparing supper when she heard her husband screaming. PW1 stated that she hurried, went out of the kitchen where she was, upto the door of the house where the deceased was seated. PW1's evidence was that a man emerged from the house where the deceased was and ran towards the direction where the accused's house was. She adduced that she did not see the face of that person and neither could she identify him.

PW5 was daughter of the deceased and sister of the accused. She too was seated with her mother preparing supper when she heard her father scream twice. She described the first scream as being stronger and the second one being muzzled. She corroborates PW1's evidence that they both went out of the kitchen toward the deceased's house.

However she says that they did not enter the house because they were afraid and also due to fact that there was pitch darkness. PW2 confirms that a man ran out of the deceased's house towards the direction where the accused's house was.

PW5 said she could not identify the person as it was dark.

The rest of the witnesses were not eye witnesses of the incident. Their evidence was formal.

The onus was on the prosecution to prove the charge against the accused, that it was his act or omission which caused the death of the deceased.

PW1, the key witness in this case was treated as a hostile witness by the prosecution because of recanting her statement to the police. Her evidence in court was she could not identify the person who emerged from the deceased's house after attacking him. In her statement to the police, PW1 had implicated the accused as the one she saw emerge from the house where the deceased was eventually found dead.

The law of evidence requires that evidence of a hostile witness needs corroboration to be relied upon. I sought for but found no corroboration from the prosecution case implicating the accused with this offence. PW5, the only other eye witness of the incident denies identifying the person who emerged from her father's house.

At the close of the Prosecution case I found that the prosecution has adduced no evidence which implicates the accused with this offence. There was no iota of evidence against the accused. Consequently I acquit him at his stage under Section 30 of the CPC.

Dated, signed and delivered at Meru this 17th Day of February 2011.

LESIIIT, J

JUDGE

17TH February 2011

Coram:

Lesiit -Judge

Kirimi Court clerk

Mr. Musau for State

Mr. Ntarangwi holding brief for accused present

Ruling was read, signed and delivered in open court this 17th February 2011.

LESIIIT J.

JUDGE

Dated Signed and delivered at Meru this 17th day of Feb 2011

LESIIT, J

JUDGE