



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Criminal Case 9 of 2008**

REPUBLIC..... PROSECUTOR

VERSUS

P.C. EDWARD KIRUI..... ACCUSED

RULING

The accused, EDWARD KIRUI, is on trial for the alleged murder of two persons, namely GEORGE WILLIAM ONYANGO and ISMAIL CHACHA.

It is the prosecution's case that the two victims were murdered on 16th January 2008, at Kondele Market, Kisumu city.

By the time the prosecution closed its case, they had called a total of twenty-one (21) witnesses. Notwithstanding the evidence adduced by the said witnesses, the accused invited the court to find that the prosecution had failed to establish a prima facie case against him, to warrant his being put to his defence.

First, it is his view that the identity of the victims of the shooting incident had not been established.

Mr. Mitei, the learned advocate for the accused, submitted that the court should not assume that the two persons who were apparently shot, as shown on the video clip, were the accused persons. In his view, the prosecution ought to have had the cameraman who had captured the incident, asked to identify the persons shown on the video.

It was his further submission that the cameraman should also have been called upon to try and identify the police officer who was captured on the video.

Secondly, the defence counsel expressed the view that there was a glaring discrepancy on the issue of time. He illustrated that point by saying that whilst GEORGE WILLIAM ONYANGO had allegedly been shot at 12.00 noon, the post mortem report indicated that that person died at 6.40p.m.

Thirdly, the prosecution is faulted for failing to demonstrate to the court that the video clip which was played in court was the same as the one which PW 2, Chief Inspector Hansent Kaloki, had seen when he allegedly identified the accused.

And whereas PW 1, David Wafula Manyonge, testified that he had known the accused even prior to the date of the shooting incident, the defence faulted the prosecution for failing to show the video clip to that witness, so that he could have told the court whether or not the police officer captured in the said clip was the accused.

The accused also submitted that the exact scene of crime was not established. His reason for so saying is that whilst the persons in the video clip appeared to have been shot whilst they were facing the police officer who appeared to shoot them, the post mortem report shows that George William Onyango was shot from the back. In the event, Mr. Mitei submitted that the scene of crime shown of the video clip was different from that described by PW 1, PW 7 and PW 12.

Another issue raised by the accused was that no Identification Parade was conducted. In his view such a parade was necessary, especially when it is taken into account that PW 1 had testified that he had known the accused before the incident in question.

More significantly, because there were many police officers at the place where the shooting took place, the accused believes that a parade would have made it possible to determine whether or not he was the police officer who had fired the bullet or bullets which caused the deaths of the two victims.

It was the accused's position that the failure, by the prosecution, to explain the whereabouts of the second bullet head, also left gaps in the prosecution case.

At this moment in time, the court is required to determine whether or not the prosecution has adduced sufficient evidence to warrant the accused being placed on his defence. In arriving at that decision, I will take into account the fact that unless there is such evidence as can connect the accused to the offences for which he was charged; and also if the evidence on record is insufficient to lead to a conviction, there would be no need to require the accused person to defend himself.

Whilst I have taken cognizance of the issues raised by the defence, I will not delve into each such issue.

For now, it is clear that two persons were shot dead. Those two persons were Ismail Chacha and George William Onyango.

The prosecution has led evidence to establish the cause of death of each of the two victims.

The prosecution has also led evidence to show that the accused was one of the police officers who were on duty at the Kondele area of Kisumu, on the date when the two persons were shot dead.

From the video clips it appears that it was not easy to identify the particular police officer who shot the victims. But it is also on record that at some point, the police officer concerned, raised the helmet, exposing his face.

From that evidence, it would appear that the accused was placed squarely at the scene of crime.

Furthermore, the ballistics expert appears to have linked the bullet-head to the gun which had been issued to the accused on the day when the victims were shot dead.

As the gun had many bullets which had been fired from it; and as some of the said bullets were recovered from the bodies of the victims, it does appear to me that the accused has a case to answer.

Accordingly, I do now place the accused on his defence.

It is so ordered.

Dated, Signed and Delivered at Nairobi, this 8th day of February, 2010.

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FRED A. OCHIENG
JUDGE