



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL CASE NO. 100 OF 2003
LESIIT, J.

REPUBLICSTATE

VRS

PATRICK MUNGANIA NGARUTHI.....ACCUSED

RULING

The accused was charged with the murder of the deceased in December 2003. This matter is partly heard before Hon. Lenaola J. It was heard by the assistance of Assessors. When the matter came up for hearing before me on 12th October 2010 and 24th November, 2010, the Assessors were not summoned to come. In the further hearing of the case, none of them appeared for the hearing.

That apart, the prosecution had one witness to call, one Dr.Kimuku who performed the post mortem on the body of the deceased. That witness was not in court during the both occasion. The witness has not been produced by the state since 6th Feb, 2007 when all five prosecution witnesses were heard; Application for adjournment to procure the witnesses were made on several occasions but the witnesses was never produced. No explanations were ever given for his absence.

There are two other witnesses who are to be called. There were the investigating Officer of the case and the OCS of the station where the matter was reported. It was alleged without proof, that the two officers are deceased.

Turning to the evidence adduced before the court, the only eyewitnesses of the incident was PW1 Peter Mwenda Francis. His testimony was that he was going home in the company of the deceased at 9.30pm on 30th December, 2002 when they met four people. PW1 testified that one of them held him and that both of them fell down. He claimed to have been stabbed by the person and he said that he recognized him as the accused in the case enabled by moonlight. This witnesses was stepped down to be recalled at a latter stage when he testified that two days after the incident, he and others proceeded to the home of the accused and recovered a coat, knife and trousers which had blood stains. PW1 was not recalled to identify the said exhibits. That means the accused was not given an opportunity to cross examine this very important witness. Also as important, the alleged items were not produced in court as exhibits, neither were they subjected to any examination or analysis by the Government Chemist Department to determine whose blood, if any, was on the exhibits.

The other witnesses did not the attack. In fact PW1 did not disclose the nature of injuries suffered by the deceased. In fact he did not say he even saw the deceased being stabbed by any one at all.

There was no evidence adduced to testify to the nature of the injury suffered by the deceased in this case. The doctor who performed the post mortem was not called as a witness.

There was no evidence on the cause of death. There was no evidence before the court to establish a nexus between the injuries suffered by the deceased and the accused.

It is important to note that the incident was at night. The circumstances of identification were very poor for positive or correct identification. The accused was not arrested at the scene. According to PW5 the Assistant Chief of the area where the incident occurred he re- arrested the accused and the Area Chief, his boss, from members of Public. He did not disclose the date of re- arrest. However, he states he handled over the accused and the Chief to the local Police Station. According to the court record the accused was charged in court in December 2003.

Having considered the evidence adduced in this case, I do find that there was no iota of evidence to implicate the accused with the death of the deceased. The accused has been in custody since late 2003. I think it is unfortunate that the accused was made to wait seven years for his case to be concluded. That is the reason I did not wish to entertain the suggestion of the Learned State Counsel Mr Musau, that without Assession the court was not properly constituted and that it could not proceed with the case. The prosecution has failed to establish the case against the accused.

I accordingly acquit him at this stage under S. 306 of the CPC.

Dated at Meru This 9th Day of December 2010.

LESIST, J.

JUDGE

9TH DECEMBER 2010

CORAM:

LESIIT, J.....JUDGE

KIRIMI/ MWONJARU.....COURT CLERKS

MR. MUSAU.....FOR STATE

MR. MOSOTA.....FOR ACCUSED

JUDGEMENT/ RULING WAS READ, SIGNED AND DELIVERED IN OPEN COURT THIS 9TH DECEMBER 2010

LESIIT, J,

JUDGE