

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Criminal Case 28 of 2008

REPUBLIC.....PROSECUTOR

VERSUS

DANIEL MANYITAI.....ACCUSED

RULING

The Accused has been charged for the offence of Murder, contrary to section 203 as read with section 204 of the Penal Code, Cap 63 Laws of Kenya. The particulars of the offence as stated in the information are as follows:

“On 9th day of February 2008 at Ngurumani area Magadi in Kajiado District within Rift Valley Province murdered RAEL MANYITAI.”

During the trial, the prosecution called a total of eight witnesses to prove their case. In his testimony, PW1 introduced himself as the father to the accused and also a farmer. Further to the above, PW1 conceded that on 9th February, 2008 two young men viz, Pinga and Tomeo went to claim a goat from his home. The basis of the above was that another young man had stolen a goat that he later ate with the accused. PW1 further stated that while the young men were leaving, they met the accused and a fight ensued. According to PW1 while he was hooding the accused, the deceased held Pinga. PW1 further testified that while struggling, his wife (the deceased) fell on an arrow and she got injured on the hand. After the death of the wife, PW1 recorded a statement. Due to his evidence, the prosecution applied that he be treated as a hostile witness. After he was so declared, he was vigorously examined. The second person who was present at the scene was PW6 – Simati Ole Kurduni. Though he admitted that he was among the young persons who collected two goats as compensation, he also testified that he never saw the accused attacking the deceased. Apart from the above, the only other key witness was PW4- Dr. Jane Wasike Simiyu who conducted the post mortem. According to her examination, she formed the opinion that the cause of death was due to poisoning from poisoned arrow injury. However, she also stated that the wound itself could not have caused the injury. Her conclusion put doubt on the cause of the death.

From the above evidence it is crystal clear that none of the prosecution witnesses actually saw the accused either assaulting or killing his mother. No doubt, PW1 changed his story and that is why he was treated as a hostile witness by the prosecution. Similarly, PW6 was rather evasive and cagey. To me, he gave the impression that he was economical with the truth.

In the case of RAMANLAL T BHATT VERSUS REPUBLIC [1957] E.A. the Court of Appeal stated as follows:

“(i) The onus is on the prosecution to prove its case beyond reasonable doubt and a prima facie case is not made out if, at the close of the prosecution, the case is merely one ‘which on full consideration might possibly be thought sufficient to sustain a conviction.’

“(ii) The question whether there is a case to answer cannot depend only on whether there is ‘some evidence irrespective of its credibility or weight, sufficient to put the accused on his defence. A mere scintilla of evidence can never be enough; nor can any amount of worthless discredited evidence.’

Given the sketchy and insufficient evidence, I hereby find that the prosecution has failed to establish, a

prima facie case against the accused to require him to be put on his defence. In the event that the accused opts to keep silent, then no properly constituted tribunal directing its mind judiciously can convict the accused. The upshot is that I hereby find that the accused has no case to answer and hence he is 'acquitted' of the offence of murder contrary to sec. 203 as read with sec. 204 of the Penal Code, Cap 63 Laws of Kenya. The accused should be released forthwith unless held lawfully.

Those are the orders of this court.

MUGA APONDI

JUDGE

Ruling read, signed and delivered in open court in the presence of the accused

..... Defence Counsel

..... State Counsel

MUGA APONDI

JUDGE

23RD OCTOBER, 2009