



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**Criminal Case 74 of 2006**

REPUBLIC.....PROSECUTOR

VERSUS

ANDREW THEURI GATITU.....1<sup>ST</sup> ACCUSED

PAUL MUNDIA MAINA.....2<sup>ND</sup> ACCUSED

**RULING**

**Andrew Theuri Gatitu** and **Paul Mundia Maina** (*the 1<sup>st</sup> and 2<sup>nd</sup> accused persons respectively*) were charged with the offence of **murder** contrary to **section 203 as read with section 204** of the **penal code**. The particulars of the offence state that on the 6<sup>th</sup> and 7<sup>th</sup> day of August 2006 at Ngano area in Nyandarua District of the Central Province murdered **Isaac Ngige Njoroge**. The prosecution relied on evidence by eight prosecution witnesses in their bid to prove the charge against the accused persons.

**Joseph Nderitu Maina PW1** testified that he had gone to the shopping centre called Ngano. He was in the company of Francis **Ngugi PW2**; on 9<sup>th</sup> November 2006 at about 6.30 they were enjoying drinks at a bar called Top life. After drinking they had supper at Wendo butchery. They went on club crawling until 10.30 p.m. when they decided to go home after the owner of Top life indicated that he wished to close the bar. On their way home, they found the 1<sup>st</sup> and 2<sup>nd</sup> accused standing near the entrance of Ngano Secondary School. On the ground there was somebody lying down. When they enquired the person who was lying down, the 2<sup>nd</sup> accused Paul Mundia whom they had nicknamed as “Mando” told them, the person who was lying down was another old man who used to live at Pyrethrum estate. PW1 and PW2 did not bother to check the person.

They went on walking; they were joined by the 2<sup>nd</sup> accused person, who walked with them until he reached his home. It is the next day that they heard people screaming and when they went to check, they found the body of Isaac Ngige Njoroge who was lying dead on the road. The Chief of area announced that whoever had information regarding the death of the deceased to give the information, thus PW1 and PW2 volunteered, the information and recorded statements with the police.

**Pauline Wanjiku Kamau** was the bar maid working at the Top Life Bar. She testified that she was at her place of work on the 7<sup>th</sup> August 2006 at 8.00 o'clock when she heard that the deceased's body had been found near the shopping centre. She confirmed that the deceased had been to her bar to drink. She had served the deceased in the company of other people with drinks the previous day. **Stanley Ngechu Gicheru** also testified that he was drinking on 6<sup>th</sup> August 2006 at Ngano trading centre with the deceased and **Johana Karanja PW5** but the next day he was called and informed that the body of Isaac was found by the roadside. He reported the matter to the police. He also observed the body of the deceased which several stab wounds on the face.

**Harrison Ngige Njoroge PW6** the brother of the deceased also testified that they were drinking together on the material day, at Ngano Trading Centre in the company of other people. However when he got very drunk at 6.00 p.m. he decided to go home. He slept throughout the night. The next day he was woken up by his mother who informed him that his brother was found dead by the roadside. He reported the matter to the police and transported the body to the mortuary.

**Paul Kariuki PW7** is the owner of the bar called Fagilia. On the material day he was operating a video show but when he saw some drunken people he decided to close the show. It is only the next day that he heard that the deceased had been found dead on the roadside. **PC Joseph Ruto** attached at the Oljoorok police station received information that a body of a person was found by the roadside. He visited the scene and escorted the body to the Nyahururu mortuary pending post-mortem. The post-mortem was conducted by **Dr. Weru**, while acting on the information from two witnesses he arrested the two accused persons and charged them with the murder of the deceased. He however did not recover any murder weapon. The prosecution did not call the doctor who performed post-mortem examination on the body of the deceased.

At the close of the prosecution's case counsel for the accused persons submitted that the prosecution had failed to establish a prima facie case to warrant the two accused persons being placed on their defence. There was no evidence to prove the death of the deceased. There was no eye-witness. The accused persons were merely suspected because they were allegedly found near the place where the body of the deceased was found. It was at night 10.30 p.m. Even PW1 and PW2, who said they saw the two accused persons standing next to someone lying down, did not identify the person who was lying down as the deceased. Thus there was no evidence to connect the accused persons with the murder of the deceased.

On the part of the State **Mr. Mugambi** submitted that although the doctor did not testify and the post-mortem report was not produced to show the cause of death there was evidence to show that the accused persons have a case to answer because they were found next to a place where the body of the deceased was discovered the following day.

Having summarised the evidence by the prosecution witnesses, this case, with tremendous respect, a locus classicus case that depicts the prosecution at their lowest. I say so because no investigations were carried out. Apart from bringing a hoard of villagers who were seen drinking at a shopping centre on the day before the body of the deceased was discovered murdered on the roadside, there was absolutely no evidence to link the accused persons with the murder.

The arresting officer, cum investigating officer merely relied on the statements probably by PW1 and PW2 that they met the two accused persons standing next to a person who was lying down. No investigations were carried out to establish whether the person who was lying down was the deceased or another person the witnesses referred as the old man from Pyrethrum estate. The 2<sup>nd</sup> accused person was found standing with a paper containing a piece of meat and he comfortably walked home with PW1 and PW2 until the next day. This was merely circumstantial evidence. No investigations were carried out to establish whether there were homestead near the scene. The two accused persons were merely suspected and connected with the death of the deceased because they were found next to the body. It was late at night and in any event the accused persons were not seen assaulting the deceased nor is it known whether the person who was lying down at the time was actually the deceased. Besides the above no medical evidence was produced to establish the cause of death.

Taking the totality of the evidence before the court there is nothing to link the accused persons with the death of the deceased. I find that no prima facie evidence has been put forward by the prosecution to warrant the accused persons being placed on their defence. I find the accused persons not guilty of the offence charged. I order the accused persons to be forthwith released unless otherwise lawfully held.

**Judgment read and signed on 24<sup>th</sup> day of July, 2008**

**M. KOOME**

**JUDGE**