



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MERU

Criminal Case 34 of 2003

REPUBLIC.....APPLICANT

VERSUS

DAVID MUROKI MUNGERIA..... ACCUSED

R U L I N G

1. The accused person herein is charged with the offence of murder contrary to s.203 as read with s.204 of the Penal Code. It is alleged that on 11.8.2002 at Kamao village, Kabachi Location in Meru North District within the Eastern Province jointly with one Joshua Muroki M’Kioru (since deceased), he murdered Christopher Mungathia Muroki.
2. On 14.12.2005 and on 15.5.2006 respectively the Republic called 4 witnesses to testify namely P.W.1, Jennifer Mwimbi Mboroki, P.W.2, Dorcas Kanini Mururu, P.W.3, Grace Gaceke and P.W.4 Kirambi M’Lituange. Thereafter no witness was availed on 16.5.2006, and 20.9.2006, 27.11.2006, and 21.2.2007 but on 22.2.2006, P.W.5, P.C. Simon Kanyolo testified and on 19.4.2007, 15.5.2007, 27.6.2007 and 25.7.2007 no witness was presented and the Republic thereafter closed its case.
3. From the evidence tendered by the 5 witnesses and touching on the conduct of the accused relating to the charge of murder, P.W.1, said that she met the accused on 11.8.2002 at about 10 p.m. and the accused asked her where her step brother, the deceased, was and the witness answered that he was at his house a few yards away. She said that she noticed a gun butt protruding from the accused’s jacket and that shortly after the accused left, she heard a gunshot but she did not do anything and did not go out to see what it was all about. She added that on 12.8.2002, the accused’s wife came to her at 10.00 a.m. and told her that Christopher was dead and his body was in his house.
4. In cross-examination, the witness said that she did not see who fired the gun and said that she was surprised that her statement to the police did not have the evidence that the accused had a gun on the material night. It should be noted that a rifle was shown to the witness and the same was marked **P.M.F.1 I. but the same was ultimately not produced in evidence.**
5. P.W.2, Dorcas Kanini Mururu stated that on 11.8.2002 at 7.p.m. she saw the accused person at Kamao Market who just lazed around talking to none until 9 p.m. when the accused’s father came and she heard him saying that the accused and another of his sons would “**kill Mururu and his brother Christopher Mungathia**” because they had objected to the sale of family land. They then went away and the next morning, P.W.2 was informed by the mother of the deceased, (P.W.1) that the wife of the accused had told her that her husband was dead.
6. P.W.3, Grace Gaceke stated that on 11.8.2002 at 9.30 p.m. she saw the accused with a gun at Kamao

Market and the next day she learnt that the deceased had died and P.W.1 screaming that the accused had done what she had told him not to do. She went to the deceased's home and confirmed that indeed he had died and in cross-examination stated that the deceased had prior to his death, refused to sign transfer forms relating to part of the family land and had been beaten by his father and the accused for that reason.

7. P.W.4, Kirambii M'Lituange only received information from P.W.1 that her son had died and this was on 12.8.2002 at 7.30 a.m. or thereabouts. He reported the matter to the "sub-area" and the accused was arrested.

8. P.W.5, P.C. Simon Kanyolo was the one who re-arrested the accused on 19.8.2002 and took him to Mutuati Police Station.

9. From the above evidence, it may well be that the accused (from the evidence of P.W1, P.W.2 and P.W.3) is the one who killed his stepbrother because of a land related issue. However that evidence and all other on record does not *prima facie* establish either malice aforethought or in fact the act of murder. The evidence on record although raising doubts as to the accused's innocence is not strong enough without any other to justify the accused being put on his defence. There is no evidence that indeed Christopher Mungathia is dead and even if we take it that he is, there is no evidence showing that he died of a gun-shot wound. The weapon which was marked for identification was eventually not produced and cannot assist this court in any way. The investigating officer did not testify to state on what evidence he charged the accused and in the end, the case must crumble.

10. Our Constitution presumes that one is innocent until proved guilty. For any court to even find at a prima facie level that a person accused of the offence of murder has a case to answer, credible evidence must be placed before it. None so far as I can see exists in this court.

11. In the end, I do not find that the accused has any case to answer and that being my finding, I shall acquit him of the charge of murder and order his release unless he is otherwise lawfully held.

12. Orders accordingly.

Dated signed and delivered this 2nd day of August 2007

ISAAC LENAOLA,

JUDGE

In the presence of:

Mr. Mosota Advocate for the Accused

Mr. Muteti State Counsel for the Republic

ISAAC LENAOLA,

JUDGE