

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Criminal Case 88 of 2003

REPUBLIC RESPONDENT

VERSUS

PHILIP MWANGI CHEGE ACCUSED

R U L I N G

Philip Mwangi Chege the Accused herein has been arraigned before this court charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. It was alleged that on the 7th day of September 2002 at Mwea Irrigation Scheme Senior Staff Quarters in Kirinyaga District within Central Province, jointly with others not before the court, he murdered Wilson Kinyua Cyrus.

The prosecution have closed their case after calling a total of 8 witnesses.

Briefly the case for the prosecution was that the Accused was employed as a watchman guarding the staff Quarters at Mwea Irrigation Scheme where John Njuguna Kiguru Kinyanjui (P.W.6) and Mohamed Abdillai Abdi (P.W.7) were staying. On the morning of 7th September 2002 at about 3.00 a.m. P.W.7 was woken up from his sleep by some knocks at the back of his house. On pipping outside he saw figures of 8 men. He raised an alarm and in response thereto members of the public and a vigilante group confronted the thugs caught up with one of them beat him up and left him lying down fatally wounded. Both P.W.6 and P.W.7 came out of their houses and saw the man being beaten. They did not identify any person in the crowd which administered the mob justice. Both P.W.6 and 7 confirmed that though present the Accused did not participate in administering the mob justice.

In the meantime Raphael Kinyanjui Wanjohi (P.W.2) who also stays around the same area, drove to Wanguru police and reported the commotion. He was accompanied back to the scene by Sgt. Vendrick Simiyu (P.W.5) who was then attached to Wanguru Police Station. At the scene they found the deceased lying down with cuts on his head and legs. The deceased was already dead. There was a group of people gathered outside the fence that surrounded the servants' quarters. The Accused introduced himself to the officer and explained that P.W.7 had raised an alarm that there were intruders around his house, and that in response thereto members of the public caught up with one of the thugs and administered mob justice to him. P.W.5 examined the scene and found that the wire mesh near the house of P.W.7 was cut.

The body of the deceased was later collected from the scene by P.C. Julius Kaihera (P.W.8) and taken to Kerugoya Hospital Mortuary. The body was later identified by his father Silas Kiura Kimotho (P.W.4) who had learnt of the incident from Fredrick Kamande Njoroge (P.W.3) a neighbour and workmate of the deceased.

The question is, on the above evidence, is there anything that points to the Accused person as having caused the death of the deceased? Is there any evidence that the Accused had any malice aforethought?

First the prosecution failed to call the Doctor who performed the post mortem examination and therefore crucial evidence relating to the cause of death of the deceased is missing.

Secondly there is clear evidence from the prosecution's own witnesses that the deceased was attacked by a crowd and members of a vigilante group who responded to the alarm raised by P.W.7 and that the

Accused though present did not participate in the attack. It boggles the mind as to why the police decided to charge the Accused person with this offence in the absence of any incriminating evidence. It is evident that no investigations were carried out.

I find that there is absolutely no evidence at all against the Accused and it would be a travesty of justice to put him on his defence.

Accordingly I find the Accused not guilty and acquit him of the charge under section 306(a) of the Criminal Procedure Code. The accused shall be forthwith set free unless otherwise lawfully held.

Dated signed and delivered this 31st day of March 2006.

H. M. OKWENGU

JUDGE