

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

Criminal Case 19 of 2004

REPUBLIC.....
.....PROSECUTOR

VS

WYCLIFFE NANDOKHA WINGA.....
.....ACCUSED

RULING

Wycliffe Nandokha Winga is before this court on the information of the Attorney General, duly facing a charge of murder contrary to section 203 as read together with 204 of the Penal code. The particulars are that on the 14th day of March 2004 at Nangataq Village, East Siboti Sub-location in Bungoma District within Western Province murdered Wafula Wanyonyi Robin. The prosecution closed its case after tendering the evidence of eleven (11) witnesses. Both the defence and the prosecution counsels opted not to make submissions under section 306 of the Criminal Procedure Code.

I have considered the evidence of the eleven (11) witnesses. None of these witnesses mentioned having seen the accused stab the deceased. It is not in dispute that the accused was at the scene of crime. Martin Nyongesa Wasike (P.W.10), told this court that the accused and his accomplice took him with the police to the scene and revealed where they hid the murder weapon. P.W10, said, a Somali Sword was recovered inside a hip of firewood. Corporal Vincent Juma (P.W11), gave a similar account in respect of the recovery of the murder weapon. P.W11, produced in evidence the murder weapon which he claimed, it had blood stains at the time of the recovery.

Doctor John Ouma Juma (P.W9), produced the post mortem report in which he formed the opinion that the deceased died as a result of respiratory arrest due to asphyxiation due to collapsed lung due to stab wound.

After a careful consideration of the evidence tendered, it became apparent that the accused may have participated in the killing of the deceased. The witnesses were however not candid to this court. None wanted to say he saw the accused attack the deceased. The only evidence that connected the accused with the offence is that of P.W10 and P.W11. Their evidence is purely circumstantial in that the accused took them to where it is alleged that he admitted having hidden the murder weapon. The police should have done more than that. The murder weapon should have been taken for examination to determine the blood group on the Somali sword and of course the deceased's blood. Otherwise there is no nexus between the Somali sword and the deceased's death. It was incumbent upon the prosecution to establish that the circumstantial evidence tendered justified an inference of guilt that is to say that the incriminating facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt. In this case the circumstantial evidence is unreliable. It is admitted that there were many people who had attended the memorial service of Juma Barasa deceased, hence it is possible somebody else could have stabbed the deceased. This is one of those cases which was poorly investigated by the police. I also note that one of the witnesses Crispinus Wanjala was declared a hostile witness when he gave evidence which contradicted what he recorded at the police station.

In the final analysis, I am satisfied that the evidence did not establish the offence facing the accused hence a prima facie case is not made out. The evidence cannot sustain a conviction. Consequently the

accused is acquitted of the offence of murder. He is hereby ordered set free forthwith unless lawfully held.

Dated and delivered this 11th day of September 2006.

J. K. SERGON

JUDGE

In open court in the presence of Mrs. Mumalasi holding brief for Mr. Were for the accused and in the presence of Mr. Onderi for the state.

Court: The assessors are discharged. They should be paid for today's allowances.