

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Criminal Case 1 of 2004

REPUBLIC..... PROSECUTOR

VERSUS

1. DAVID KAGAI KAREU

2. SAMUEL KARURI NJERI ACCUSED

R U L I N G

David Kagai Kareu and Samuel Karuri Njeri (hereinafter referred to as 1st and 2nd Accused) have been arraigned before this court on information of a charge of murder contrary to section 203 as read with section 204 of the Penal Code. It is alleged that on the 15th November 2003 at Mururi village in Kirinyagah District in Central Province, they jointly murdered Francis Mwaniki Karuri (hereinafter referred to as the deceased).

The prosecution have closed its case after calling 8 witnesses. The evidence that has been adduced by the witnesses is that on the night of 15th November 2003 at about 7.30 p.m. John Muchira Mwaniki (P.W.1), Ephantus Ndambiri Kivuti (P.W.2) Fredrick Njogu Karuri (P.W.3) and the deceased were drinking alcohol at the home of someone identified by P.W.1 as "Francis Njogu" and P.W.3 as "Mureithi." P.W.3 then left and went to a Bar in Muirui shopping centre where he remained until 10.00 p.m. after which he went home.

P.W.2 on the other hand accompanied P.W.1 to his house as he wanted to be given some tar which he needed to seal a leakage in the roof of his house. As the two were walking the deceased who is a neighbour of P.W.1 was also following them behind. P.W.1 called out to the deceased to hurry up so as to keep up with them, but the deceased responded that he normally goes home alone. David Kinyua Kaguru (P.W.6) who was on his way to Mururi town met the three near the main road and overheard this conversation. He greeted them and went his way. Since P.W.2 was in a hurry they walked on with P.W.1 leaving the deceased behind. When they arrived at P.W.1's house, he gave P.W.2 the tar and P.W.2 left.

At about 8.00 p.m. Alice Njoki Muchira (P.W.7) a neighbour of the deceased, was on her way to the shop when she met the deceased at the stage just near the home of P.W.3, P.W.7 greeted the deceased and proceeded to the shop. She then went back home.

The next morning at about 7.00 a.m. each of the witnesses were in their houses when they received information acting on which they all proceeded together with Angelus Gachoki Karuri (P.W.5), a brother of the deceased to the roadside where they found the body of the deceased lying beside the road. There was blood oozing from the deceased's ears.

The 2nd accused who is the son of the deceased was sent to Wanguru Police Station where he made a report. The scene was later visited by police officers including P.C. Peter Makara (P.W.8) who was then attached to Wanguru Police Station. The body of the deceased was taken to Kerugoya Hospital Mortuary.

On 21st November 2003 Dr. Paul Mbalu performed a postmortem examination on the body of the deceased and found the cause of death to be severe head injury inflicted with a blunt object.

On 24th November 2003, Accused 2 was escorted to Wanguru Police Station by his uncle. He was arrested by P.W.8. Accused 2 was interrogated and later Accused 1 was also arrested. The two were both examined by Dr. Abraham Gatang'i (P.W.4) and certified mentally and physically fit to stand trial. They were subsequently charged with this offence.

It is evident from the above evidence that the last person to see the deceased alive was P.W.7 who met him at 8.00 p.m. There is no evidence as to what happened to the deceased between 8.00 p.m. and 7.00 a.m. the next day when his body was recovered. There is absolutely no evidence at all connecting any of the two Accused persons with the death of the deceased. There is no evidence at all as to what possible motive Accused 2 may have had to cause the death of the deceased who was his father. No evidence was adduced regarding the relationship between the deceased and the Accused persons as to whether it was cordial or whether there was any animosity. It would appear that P.W.8 relied on evidence which was not admissible in arriving at his decision to charge the Accused persons.

The upshot of the above is that the evidence that has been adduced before this court does not establish any prima facie case against any of the Accused persons. Accordingly I find under section 306(1) of Criminal Penal Code that each of the Accused is not guilty of the offence charged.

Each shall therefore be forthwith released unless otherwise lawfully held.

Dated, signed and delivered this 28th day of February 2005

H. M. OKWENGU

JUDGE