

REPUBLIC OF KENYA

IN THE HIGH COURT
AT NYERI
HC. CR. NO. 15 OF 2004

REPUBLIC.....PROSECUTOR

VERSUS

DAVID MUNENE NDEGE.....ACCUSED

RULING

From submissions by counsel on each side in right of the evidence on record before this court, the only evidence trying to link the accused with the offence in this case is evidence of James Kinyua, who gave evidence as PW5. His evidence concerning identification of the accused.

That evidence as adduced during the witnesses evidence in chief was so inadequate that had the learned counsel defending the accused not come in during cross examination to turn into a prosecuting counsel. I would not have bothered in this ruling to comment on that part of the evidence. What Mr. Mahinda said therefore forces me to make some comment on that evidence in that it still remains inadequate as I watched PW5 talk of what he was not sure of but about which he had to give an answer which he therefore gave. An answer which cannot stand proper tests had PW5 been subjected to such test.

He had to come from hospital after admission, to mention the accused.

In any case, his evidence was to be supported by evidence of police identification parade. PW9 has tried to refer to such evidence. But accordingly to the evidence of PW5 himself, before this court, he did not do anything with the police apart from the police recording his statement. PW5 therefore talked of no police identification parade.

Further, no police officer has been in this court to give evidence that he conducted a police identification parade when PW5 was then identifying witness.

PW5 as it is on record before me is not evidence which amounts to recognition and on such cannot stand alone especially bearing in mind circumstances then prevailing which could not rule out a mistake.

It is evidence which at best, must be corroborated in the working of the accused with the offence. I have no such corroborating evidence on that issue.

That is the most important part of the case at this stage and I do not therefore need to comment on the rest of the evidence as I do not see the purpose for doing so if there is no evidence supporting linking the accused with offence in the first place.

From the above therefore, I do not find sufficient evidence to require accused person be put on his own defence. Accordingly under section 306 of the criminal procedure code, I do not find the accused person guilty and proceed to acquit him.

He be released forthwith unless lawfully detained in some other cause.

Dated this 16th day of February 2005.

J.M.KHAMONI

JUDGE.