



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**CRIMINAL CASE NO. 66 of 2003**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**BONIFACE GATUNGI MBUCHI.....ACCUSED**

**RULING**

Boniface Gatungi Mbuchi hereinafter referred to as the Accused has been arraigned before this court for the offence of murder contrary to section 203 as read with Section 204 of the Penal Code. It is alleged that on the 1st day of January 2003, at Karuru one village in Murang'a District He murdered Ephantus Kariuki Gakenge.

The prosecution has closed its case after calling 6 witnesses. None of the 6 witnesses saw the Accused person injure the deceased or commit any act that could have caused the death of the deceased. The only evidence implicating the Accused is the fact that He was drinking with the deceased on the night the deceased died and that they left the Bar together that night, and the deceased was discovered the next morning with severe injuries. However according to the evidence of Mary Wambui Mbuchi (PW 2) who was also drinking in the same Bar with the deceased and Accused, when they left the Bar PW 2 and her brother Stephen Muremi walked ahead whilst the deceased and Accused remained about 5 steps behind, and that the Accused who is a brother to P.W. 2 arrived home just about 5 minutes after the witness. The Accused's clothing were not bloody and there was no sign of any struggle. This is not consistent with the Accused having inflicted any injuries on the deceased.

It is apparent that the Accused was merely charged because of suspicion as the deceased's wife Joyce Munyutha Kariuki (P.W.1) alleged that the Accused had on a previous occasion chased the deceased and threatened to kill him. Suspicion however, no matter how strong cannot take the place of hard evidence.

Of more concern in this case is the fact that no evidence was adduced to prove the cause of death of the deceased. Neither the Doctor who treated the deceased at Kenyatta National Hospital, nor the Doctor who performed the post mortem examination on the deceased were called to testify. The evidence of these two Doctors was crucial given the evidence of P.C. Peter Mulwa (P.W.6) that the initial report received was that the deceased was found injured on the road and was suspected to be a victim of a hit and run accident. Only the evidence of these Doctors could have eliminated this possibility.

In the old case of Ramanlal T Bhatt v Republic [1957] E A 332. The court of appeal had this to say on the issue of a prima facie case.

“Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out if at the close of the prosecution, the case is merely one which on full consideration might possibly be thought sufficient to sustain a conviction.....”

Nor can we agree that the question whether there is a case to answer depends only on whether there is ‘some evidence, irrespective of its credibility or weight, sufficient to put the Accused on its defence.’ A mere scintilla of evidence can never be enough nor can any amount of worthless discredited evidence.....”

Needless to state that the evidence adduced by the prosecution in this case is worthless and insufficient to

prove that the deceased was murdered or that He was murdered by the Accused. I find that the Accused has no case to answer and accordingly find the Accused not guilty of the offence under Section 306(1) of the Criminal Procedure Code. I acquit the Accused and order that He shall be forthwith set free unless otherwise lawfully held.

**Dated, signed and delivered this 26th day of May 2005.**

**H. M. OKWENGU**

**JUDGE**