

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
Criminal Case 12 of 2002

REPUBLIC PROSECUTOR

VS

BENSON WEKESA MUKHEBI ACCUSED

RULING

Benson Wekesa Mukhebi is before this Court duly charged with the offence of murder contrary to section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on the 30th day of November 2001 at Muchemwa village in Bungoma District within Western Province murdered Anthony Nyongesa Mukhebi. The deceased was the accused person's brother.

The prosecution closed its case after five witnesses had testified. The defence counsel and the learned Principal State Counsel were called upon to make submissions under section 306 (1) of the Criminal Procedure Code.

Mr. Sichangi advocate for the accused urged this court to acquit the accused person because he was of the view that the prosecution had not established a prima facie case to enable this Court place his client on his defence. He argued that the entire evidence tendered by the prosecution did not incriminate the accused.

On his part, Mr. Onderi, the learned Principal State Counsel was of the view that the prosecution had established a prima facie case sufficient to require the accused to make an answer to the charge. He pointed out that there was circumstantial evidence that the deceased was dragged from the accused's house and dumped in a nearby thicket. I have anxiously considered the evidence tendered by the five prosecution witnesses. I have also considered the able submissions presented by both the defence counsel and the learned Principal State Counsel.

The learned Principal State Counsel has correctly pointed out that the prosecution's case heavily relied on circumstantial evidence. The evidence on record shows that the accused and the deceased shared one house as brothers. There was no evidence of any hostility between them. The evidence of Beatrice Mukhebi (P.W2) indicate that the deceased who was a Muslim left her house on 30.11.2001 for the mosque leaving her and the accused still taking supper. That was the last time she saw the deceased alive. She said the accused shortly left for his house after the deceased had gone to the mosque. The deceased's body was found in a nearby thicket on 3.12.2001. It was alleged that a jembe with blood stains was found in the accused's house. It is believed that the jembe was the murder weapon. The prosecution however did not produce this crucial exhibit in Court. There was no evidence that the alleged murder weapon was ever taken for analysis.

The evidence tendered by the prosecution in my view raises very strong suspicion and belief that the accused was the culprit. But it should be remembered that strong suspicion and belief alone is no substitute for proof of guilt.

The end result is that, I find that there is no evidence that the accused person committed the offence. I find him not guilty. He is acquitted and set free forthwith unless lawfully held.

Dated and delivered this 28th day of October 2005.

J. K. SERGON

JUDGE