

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE 22 OF 2003

REPUBLIC PROSECUTOR

VERSUS

MULI KIOKO ACCUSED

J U D G M E N T

Muli Kioko, is 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 16/2/02, at Manyatta village, Ndithini division of Machakos district, he murdered Mutio Kalita.

The prosecution called a total of 5 witnesses in a bid to prove their case.

PW2, Mutisya Musyimi, a youth winger of Muthesya sub location recalled receiving a report on 16/2/02, at about 4.30 p.m. that the accused had beaten his mother to death. He proceeded to the scene, found accused arrested and being questioned. The deceased lay on a bed with injuries on the back of her head.

PW3, David Ndau Nzioka, did not witness the incident. He only learnt of the death and went in search of the accused whom he arrested at the home of one Michael Saa, where accused was taking alcohol.

PW4, Steven Kyengo Muli, is the grandson of the deceased. He did not know what happened that led to the death of the deceased. He identified the body of the deceased to the Doctor before the Doctor performed the postmortem.

Doctor Simon Kioko Muli, (PW1) recalled that on 25/2/02, he performed a postmortem on the body of Mary Mutio, on request by Yatta Police Station. He found the body to have been decomposed and had maggots. She had a depressed dented right temporal region which was probably caused by a blunt object. On dissection, he found a compound fracture of the right temporal bone and brain tissue was out due to the impact. The Doctor formed the opinion that the cause of death was brain contusion due to severe blunt head injury. PW5, PC, John Mwaniki recalled that on 18/2/02 the Officer in Charge called him and instructed him to proceed to Kakuku police post to collect a person who had been arrested by members of public on suspicion of murder.

I have considered the evidence adduced by the prosecution witnesses, submissions by Mr Konya, for the accused and Mr O'Mirera, for the state. Mr O'Mirera, conceded that there is no direct evidence linking the accused with the offence since the key witness died before he testified. The court does find that there is indeed no scintilla of evidence linking the accused to the offence. There is only hearsay evidence from the witnesses who came to the scene later. Not even the Investigation Officer testified as to how the police came to arrest and charge the accused with the offence. It would be a futile exercise and a waste of court's time asking the accused to defend himself and the court would be asking him to prove his innocence. For these reasons, the accused is acquitted of the offence under Section 306 Criminal Procedure Code for total lack of evidence against him.

R.V. WENDOH

JUDGE

Dated at Machakos this 15th day of December 2005

Read and delivered in the presence of

R.V. WENDOH

JUDGE