



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

Criminal Case 22 of 2002

REPUBLIC PROSECUTOR

VERSUS

MWANGANGI SYANDA

CHARLES KYALO ALIAS MWANA NGOMA

JULIUS KIMEU KYENGO ALIAS KYAUTEN

PATRICK MUINDE MUSA

SANI KATIKU NZIOKA ACCUSED

RULING

Mwangangi Syanda, Charles Kyalo alias Mwana Ngoma, Julius Kimeu Kyengo alias Kyauten, Patrick Muinde Musa and Sani Katiku Nzioka, (accused 1 – 5) were charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code.

The particulars of the charge are that on 19/9/01 at Kariobangi Estate in Machakos Township in Machakos District, jointly murdered Kioko Mutinda. The 3rd accused is now deceased and the charge against him accordingly abated.

The prosecution called a total of 11 witnesses and after considering all the evidence adduced by these witnesses, the court finds that the prosecution has totally failed to adduce evidence linking the accused persons with the charge of murder.

The deceased was asleep in his house on 19/9/01 at about 3.00 a.m when people broke into the compound where there are several houses. Those present in the house with the deceased were PW1 Celina Mwangeli, who worked for the deceased and PW8 Bernedetta Mwikali Kioko, the deceased's wife. PW1 said that after their door was broken, she attempted to run out as she had slept in the sitting room but was ordered back and a torch shone at her eyes. She was not able to see any of the assailants. PW8 recalled that when the murderers broke the gate and door, one person attacked her while another attacked the deceased with a hammer. PW8 was cut on the head and started to bleed whereas another attacked the deceased with a hammer and hit him on the head. PW8 was not able to identify any of the attackers as they were masked. Though her husband claimed to have got death threats, for giving evidence in court, the deceased had not revealed to her from where the threats came.

PW2 Kamene Ing'oti's evidence was not relevant to this case. She recalled that she received information from PW5 that accused 1 had sent him to tell PW2 that he would kill her how they killed Kioko. PW5 Kavisi recalled that accused 1 whom he knew very well for along time had met him and sent

him to PW2 to warn her that they would kill her how they killed Kioko. This evidence was not of any value because this was not a confession by accused 1.

PW3 Musau Mulwa Tole, spotted the 3rd accused near a shop where he lived in Kariobangi in Machakos. Again this evidence was not of much help. PW3 denied that his house was near that of the deceased. The houses were about 100 metres apart. PW4 Katonya Syeni's evidence did not add any value to the prosecution case. He merely learnt of Kioko's death.

PW6, Duncan Nzuki and PW7 Ali Bwana Hamisi lived in the same plot as deceased. They heard the gate of PW7 being broken and when they attempted to get out, found their doors bolted from outside. They only managed to get out after somebody opened for them. They found the attackers had already injured the deceased and his wife and they had fled. PW6, Doctor Kaburu, produced the postmortem report in respect of Doctor Kioko, who performed postmortem on deceased. He found the deceased to have a depressed skull, fracture of skull, brain contusion and lacerations and further found cause of death to be cardio pulmonary arrest secondary to intracranial bleeding. This was consistent with PW8's evidence on the injuries that were inflicted on the deceased.

PW10, Police Constable Joseph Kiptoo, was given some instructions by the Officer in Charge of station who had a list of suspects. He went ahead to arrest the accused persons with the help of other officers. He had no idea how the Officer in charge got the names on the list. The Officer in charge of Station was not called as a witness. So far there is no evidence before the court linking the accused to the offence. PW11, Police Constable Alex Ogutu only escorted the deceased's relatives to the mortuary to identify the body for purposes of postmortem.

The Investigation Officer was never called as a witness to shed light as to how he came to charge the accused persons. The result is that the evidence on record falls far below the standard required to establish a prima facie case and warrant the accused persons to defend themselves. They are therefore acquitted of the charge of murder Contrary to Section 203 and 204 of the Penal Code and are set at liberty forthwith unless otherwise lawfully held.

Dated at Machakos this 15th day of December 2005

R.V. WENDOH

JUDGE

Read and delivered in the presence of

R.V. WENDOH

JUDGE