

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL CASE NO. 35 OF 2004

REPUBLIC.....PROSECUTOR

VERSUS

SAMSON CHEGE NYUTU.....ACCUSED

RULING

The accused was charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the charge were that on the 14th December, 2003 at Bubles Bar at Nderi in Kiambu District he murdered **JAMES MWANGI WANGUI**.

The prosecution case is that on the 14th December 2003 at about 10 pm PW1 LAWRENCE GITONGA, PW2 SIMON MBITHI and other patriots were drinking at Bubles Bar. The deceased came in while drunk and picked a quarrel with one Njuguna who was seated on the same table. He used insulting words but when Njuguna realized that the deceased was drunk he did not respond. While the deceased continued to insult Njuguna, the accused came in. The accused was a friend of Njuguna and asked the deceased why he was insulting Njuguna. The deceased again picked a quarrel with the accused and a fight ensued. As they exchanged blows, the accused hit the deceased and the deceased fell down. He dragged him and continued to assault him with kicks and blows and the deceased became unconscious.

Police were called. When the accused realized that police had been called he ran away. The deceased was rushed to Kikuyu Mission Hospital where he was admitted for where he died after one week while undergoing treatment.

The prosecution called several witnesses to testify among them PW 6 DR. JANE WASIKE who performed the post mortem on the body of the deceased. In her evidence she told the court that on the 17th December, 2003 at about 11 a.m. at the City Mortuary she performed a post mortem on the body of the deceased which was identified to her by two relatives. But she could not ascertain the cause of death immediately. Externally there were no injuries. Internally there was no fractured skull, no brain haemorrhage and all other systems were remarkable. She took samples of specimens of the liver, kidney, stomach blood and urine for tests on alcohol content whose results she did not have.

At the end of the prosecution case, Mr. Machira counsel for the defence submitted that no prima facie case has been established by the prosecution to put the accused on his defence on a charge of murder contrary to Section 203 as read with Section 204 of the Penal Code. Section 203 of the Penal Code provides "Any person who of malice aforethought cause the death of another person by an unlawful act or omission is guilty of murder".

The prosecution has offered no explanation as to what became of the specimens that PW6 Dr. Wasike had removed from the body of the deceased for further examination for alcohol content and blood sugar content. This case was poorly investigated. Since the medical report by Dr. Wasike indicated that there were no external injuries noticed, no internal injuries noticed nor was there brain haemorrhage and since it is alleged that the deceased had died in hospital following an attack on him causing his death, the prosecution have called evidence as to deceased's admission to hospital, the treatment given to him therein and the date and time of his death.

The prosecution having failed to prove that the deceased had died as a result of the injuries inflicted on him by the accused, a charge of murder cannot be sustained. It follows therefore that a prima facie case

has not been established against him to be put on his defence and I therefore record a finding of not guilty and acquit him accordingly.

Dated and delivered at Nairobi this 12th day of October, 2004.

J.L.A. OSIEMO

JUDGE