



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL CASE NO.17 OF 1999

REPUBLIC PROSECUTOR

VERSUS

GARAMA RUWA NZAI ACCUSED

RULING

Garama Ruwa Nzai hereinafter called accused was charged with the offence of murder contrary to Section 203 read with 204 Penal Code in that on 24/7/98 at Majengo Kisharani Village of Mwanamwinga Location within Kilifi District of Coast province he murdered Randu Nzai Kombe hereinafter called deceased.

The prosecution called witnesses. The first one PW.1 called Daka Kadzitu who testified that on 24/7/98 he was in his farm (shamba) and while there he saw the accused cultivating his father's farm. The deceased was grazing his animals nearby. PW.1 heard deceased ask the accused "What is wrong with you" The witness got out of his maize plantation and saw the two who were about 9 steps away. They were not talking to one another. This witness thought they had a quarrel. He saw accused running with a panga. He moved and found the deceased body lying down. No breathing. He went and reported. It was about 5.00 p.m. He returned to where the body was accompanied by Katana Randu and Nyamvula Katana. The body lay there in the bush all night. Police officer came with Garama Ruwa the accused in the morning. They collected the body. This witness said that she was aware there was a dispute about land in the family. On cross examination this witness said that apart from deceased and accused there was no one else at the scene and she concluded that it was the accused who killed the deceased because she saw him ran away with a panga. PW.2, Kalundi Kombe Nzai was at his home on 24/7/1998 at 5.30 p.m. He heard shouts and saw people go to shamba of Karama Ruwa. He went there and found (Mzee Randu) deceased had been cut up on the face and head. He went to call Chief who said they leave the body where it was until the following morning.

PW.3 – Karisa Kahindi Kombe on 24.7.98 at about 4 he saw the deceased at the farm with cows. The deceased was his grandfather. Later he was told the deceased was dead and he went to the scene and saw the body of deceased with injuries.

PW.4 was the son of deceased working in Mombasa. He learnt that his father had died. He later identified the body for post mortem purposes. PW.5 was told that the deceased had died. He had heard his father was quarrelling with accused but he said his father was not a witch.

PW.6 she heard noise and saw PW.1 come crying saying the deceased was dead. She with other ran to the scene. On cross examination she said that the accused was also in the garden. PW.7 who testified that he only saw the dead body and repeated what PW.1 had said. Pw.8 also narrated what PW.1 had said.

PW.9 PC Omar Mwabumla No.50973, came to Coast Provincial Hospital mortuary for the purpose of post mortem examination. He collected the long panga which had blood stains from police station which he took to Government Chemist for tests. He said the accused brought the panga to the station which was received by PC Keah. On cross examination he said accused brought himself to police station with the panga.

PW.10 No.219024 Insp. J. Keah testified how he took a cautionary statement in which the accused admitted he killed the deceased while he was grazing on their land by using the panga. No objection was taken to the production of this evidence. PW.11 testified that on material day he had tea with his brother the deceased and they parted. Later in the evening he heard that his brother was killed. PW.12 – he received report that the deceased was cut and was bleeding in the bush. He went to the scene.

PW.13 Dr. Mandalya pathologist who carried out postmortem examination on the body after which he formed the opinion that death was due to hemorrhage due to cuts on the body.

PW.14 – Insp. Golo Dube No.217692 is the one who took accused who had surrendered to P.C. Keah from Police Station. It is the accused who led them to the scene where he found the body in a pool of blood. There were cuts on the head. This witness took statement under inquiry.

PW.15 was No.55549 P.C. Keah Rashid who said he was in his office at Kaloleni on 24/7/98 at 8.00 p.m. when he saw accused walking towards his office. He told him his name was Garama Ruwa Nzai. He asked his problem and Nzai said he had murdered Randu Nzai Kombe. He arrested the accused and took him into custody, and later reported the matter to Mariakani Police Station. He also took the panga which had blood stains. The report of Government Analyst shows that the blood on the panga was group 'O' and the deceased was of Group 'O'.

The last witness for the prosecution was PW.16 Dr. Mwangombe Consultant Psychiatrist who examined the accused and was of opinion that the accused was in a fit mental condition and fit to plead.

After all the said evidence for the prosecution I find that there is evidence connecting the accused with commission of the offence and I find he has a case to answer. I therefore put him on his defence as required under section 306 Criminal Procedure Code.

Dated at Mombasa this 15th Day of May, 2002.

J. KHAMINWA

COMMISSIONER OF ASSIZE

Read in court in presence of: Mr. Ngombo

Mr. Gumo.

Accused.

Mr. Ngombo:

We want to take dates.

Accused - explained what options he has.

Accused states he will give sworn statement and has no witnesses to call.

Court: Hearing of Defence case by consent on 22/5/2002.

Present assessor to be paid allowance.

J. KHAMINWA

COMMISSIONER OF ASSIZE