



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

(CORAM: CHERERE-J)

CRIMINAL CASE (MURDER) NO. 36 OF 2018

BETWEEN

REPUBLIC.....PROSECUTOR

AND

JOSPHAT MUNENE.....ACCUSED

RULING

1) **JOSPHAT MUNENE (Accused)** is 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 30th January, 2018 at Amwathi Location, in Igembe South Sub-County within Meru County, unlawfully murdered JOSPHAT THURANIRA

2) **PW1 DOUGLAS MIRITI**, chief Kithetu Location upon receiving a report that someone had been robbed and attacked and was lying at Irene area within Maua visited the scene and found the victim who was barely alive who identified himself as THURANIRA and he recognized him as his nephew. The witness reported the matter to police and later escorted the victim to hospital where he died while undergoing treatment.

3) **PW4 JOSEPH KARUMA** and **PW5 JOSEPH THIANKOLU** on 30.01.2018 saw a man they did not know being robbed of his phone by some people that they did not identify.

4) At the close of the prosecution case, the court is called upon to determine if a case has been made out for accused to defend himself.

5) There is no doubt that the deceased died. The postmortem form, **PEXH. 1**, shows that deceased died of cardiopulmonary arrest due to severe head injury with multiple cuts with sharp objects with fracture of the skull, epidural and subdural hematoma, and cuts on esophagus and mandible.

6) None of the prosecution witnesses stated that accused person committed the unlawful act that caused the death of the deceased.

7) In order to establish the accused's culpability, the prosecution wholly relied on the evidence by **PW3 and PW5**.

8) **PW5 PC PATRICK MURIIRA**, the investigating officer stated that in the course of investigations, the deceased's family members whose names he neither recorded nor knew informed him that the deceased was robbed of a mobile phone whose description and subscriber number he did not record. It was his evidence that DCI officers whom he did not name and who were not called as witnesses subsequently recovered a black Techno phone whose IMEI number he neither knew nor recorded from PW3 IRENE KARIWA. PW3 testified that the phone in question was given to her by accused who was her boyfriend and on that ground PW5 arrested accused and caused him to be charged.

9) In the course of hearing, it turned out that the phone tenderer in evidence was **IMEI NUMBER 35241908035296**.

10) The issue for determination is whether the prosecution has established any nexus between **phone handset IMEI NUMBER 35241908035296** with the accused and the deceased.

11) It is worthy to note that no one identified the phone in issue as belonging to the deceased. In fact, the investigating officer's evidence that the phone was recovered by DCI is questionable for the reason that the DCI officers could not investigate a phone whose IMEI and subscriber number they had not been provided with.

12) The evidence by PW5 properly evaluated falls in the category of what the Court of Appeal described in **NDUNGU KIMANYI vs. REPUBLIC [1979] KLR 282 as follows:**

“The witness in a criminal case upon whose evidence it is proposed to rely should not create an impression in the mind of the court that he is not a straightforward person, or raise a suspicion about his trustworthiness, or do (or say) something which indicates that he is a person of doubtful integrity, and therefore an unreliable witness which makes it unsafe to accept his evidence.”

13) From the foregoing analysis, I have come to the conclusion that PW3 and PW5 are persons of doubtful integrity, and therefore unreliable witnesses which makes it unsafe to accept their evidence.

14) In the premises, I am not persuaded that there is sufficient evidence to warrant this Court to put the Accused on his defence because to do so would be an exercise in futility. The evidence on record is such that it cannot sustain a conviction even in the event that Accused is placed on his defence and he opts to remain silent.

15) Consequently, under the Provisions of Section 306 (1) of the Criminal Procedure Code, Accused is hereby found **NOT GUILTY.**

DATED AT MERU THIS 13th DAY OF May 2021

T. W. CHERERE

JUDGE

Court Assistant - Kinoti

Accused - Present

For the Accused - Mr. Wamache Advocate

For the State - Ms. Mbithe