



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL CASE NO. 43 OF 2012

[FORMERLY NYERI HCCR 12 OF 2010]

REPUBLIC.....PROSECUTOR

VERSUS

PETER WAINAINA MUNGAI.....ACCUSED

RULING

1. The accused is charged with *murder* contrary to section 203 as read with section 204 of the **Penal Code**.
2. The particulars are that on the night of 25th and 26th December 2009 at Kariti village, Kariti Sub-Location, Murang'a South District of the former Central Province, jointly with others not before the court, murdered *Mburu Mungai Micara*.
3. He pleaded *not guilty*. The prosecution only called *four* witnesses. The prosecution's case is founded largely on *circumstantial* evidence.
4. PW1 is a sister of the deceased and the accused. She was informed of the murder by a woman whose name she could not remember. She was however present when the police exhumed the remains from a pit nine days later. The pit was in the compound of the deceased.
5. PW2 is the area chief. He got some tips from an informer about the murder and interment of the remains in the disused pit latrine in the deceased's compound. He passed on the information to the police. On 3rd January 2010, the same informer told him that the perpetrators of the murder were planning to exhume the remains to hide the evidence. The police assisted by the public excavated the pit in the morning and removed the body. PW2 and PW3 attended the postmortem examination on 20th February 2020 at the City Mortuary in Nairobi. The body was identified by PW3.
6. The accused was arrested at Makuyu Market by Corporal Mwirigi (PW4) Police Constable Malori on 11th April 2010.
7. Applying the precedents in *Bhatt v Republic* [1957] E.A. 332 and *R v Kipkering arap Koske & another* 16 EACA 135 (1949); and, upon the digest of the evidence of *all* the *four* witnesses, I find that the Republic has established a *prima facie* case against the accused.
8. Accordingly, under the provisions of section 306 (2) of the **Criminal Procedure Code**, I place the accused on his defence.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 6th day of July 2021.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of:

The accused.

Mr. Njiraini holding brief for Mr. Kinuthia for the accused.

Ms. Adera for the Republic.

Ms. Dorcas Waichuhi & Ms. Susan Waiganjo, Court Assistants.