



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**CRIMINAL CASE NO. 6 OF 2013**

**REPUBLIC**

**VERSUS**

**BENSON THAIRU WANGUI**

**MICHAEL MAINA NJOROGE.....ACCUSED**

**RULING**

1. The accused Benson Thairu Wangui and Michael Maina Njoroge were both charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code; jointly with others not before the court they were accused of having murdered Davia Ndegwa Gatimu on the night of 9<sup>th</sup> March, 2013 at Karunda Gatei Road, Thego Location within Nyeri County;

2. On the 22<sup>nd</sup> September, 2011 the accused entered a plea of Not Guilty; and the hearing of the matter commenced for hearing with the 1<sup>st</sup> accused being represented by Learned Counsel Mr. Gathiga Mwangi and the 2<sup>nd</sup> accused being represented by Learned Counsel Mr. Gori; whereas Ms. Gicheha was the Prosecuting Counsel for the State;

3. The prosecution called a total of twelve (12) witnesses in support of its case; at the close of the prosecution case defence counsel were invited to make submissions as to whether the prosecution had made out a case that required the accused persons to be called upon to defend themselves;

4. Counsel for the 1<sup>st</sup> accused submitted that the prosecution called no witnesses who saw the 1<sup>st</sup> accused murder the deceased; no evidence was adduced on the existence of any grudge between the 1<sup>st</sup> accused and the deceased; no evidence was adduced that the deceased was known to the 1<sup>st</sup> accused or had been seen with him and no intent or motive was established; the prosecutions' case was based merely on suspicion; that suspicion however strong cannot form a basis for '*mens rea*' and '*actus reus*' in a murder trial;

5. The prosecutions' case had wide gaps and that the prosecution had not made out a prima facie case; counsel urged the court to acquit the accused.

6. Counsel for the 2<sup>nd</sup> accused submitted that the prosecutions' case was based on circumstantial evidence lacking in cogency which left many questions unanswered; for an offence of murder to be established two components need to be proved beyond reasonable doubt; these two components are '*actus reus*' and '*mens rea*'; the prosecution failed to establish any intention and malice aforethought and that the 2<sup>nd</sup> accused person committed the murder; all that exists is suspicion that the 2<sup>nd</sup> accused killed the deceased; and as such counsel urged the court to acquit the 2<sup>nd</sup> accused person under the provisions of section 306 of the Criminal Procedure Code;

7. In response Prosecuting Counsel for the State submitted that the prosecution had adduced sufficient evidence to support the charge that both accused were facing; that all the evidence adduced by the Government Analyst and the blood stains on the exhibits and the DNA profile pointed to the accused as being the perpetrators of the offence and urged this court to put the accused on their defence;

8. After hearing the rival oral submissions made by both counsel and having evaluated all the evidence on record and notes that even though the prosecutions' case is based on circumstantial evidence this court is satisfied that there is sufficient evidence that links the accused persons to the commission of the offence and that the prosecution has established a prima facie case against both accused that warrants them being placed on their defence to answer to the charges; refer to the renowned case of **Bhatt vs Republic (1957)**;

9. The accused are found to have a case to answer; their rights and options will be put to them for election before they present their defence.

Orders Accordingly.

**Dated, Signed and Delivered at Nyeri this 13<sup>th</sup> day of February, 2020.**

**HON.A.MSHILA**

**JUDGE**