

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL CASE NO. 7 OF 2015

REPUBLIC

VERSUS

JOHN MUREITHI MARONGE.....ACCUSED

RULING

1. The accused was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code; he was accused of having murdered Peter Muhoti Nderitu on the night 18th -19th February, 2015 at Gatugi Tea Factory in Karima Location within Nyeri County;
2. On the 19th July, 2015 the accused entered a plea of Not Guilty; and the hearing of the matter commenced on the 7/03/2018 and at the hearing hereof the accused was at all times represented by Learned Counsel Mr. Kiminda whereas Ms. Gicheha was the Prosecuting Counsel for the State;
3. The prosecution called a total of nine (9) witnesses in support of its case; at the close of the prosecution case defence counsel was invited to make submissions as to whether the prosecution had made out a case that required the accused person to be called upon to defend himself;
4. Counsel for the accused submitted that there was no direct evidence and no eye witnesses who identified or recognized the accused or saw him committing the offence; the prosecution witnesses at the scene were categorical that they did not identify the attackers despite there being lighting in the form of electricity at the factory;
5. The only evidence left was that of the geologist who analyzed soil samples taken from the factory and the soil extracted from the soles of the accused's shoes; other than the soil from the shoes there was nothing else to connect the accused to the offence to warrant putting him on his defence;
6. For those reasons counsel urged this court to acquit the accused under the provisions of Section 306 of the Criminal Procedure Code;
7. In response Prosecuting Counsel for the State submitted that through its witnesses it had provided a water tight case with sufficient evidence that proved beyond reasonable doubt that the accused had committed the offence;
8. The Government Analyst was presented with muddy shoes and the extract sample from the shoes was compared with the sample taken from the factory grounds by the Investigating Officer; the Report from the geologist was sufficient evidence and it linked the accused to the scene of crime and prayed that the accused be put on his defence;
9. In the rejoinder counsel for the accused submitted that the prosecution produced the shoe but failed to produce the soil extracted from it; counsel reiterated there was nothing that was extracted from the shoe; so there was no linkage to the accused;
10. After hearing the rival oral submissions made by both counsel and having evaluated all the evidence on record, this court is satisfied that the soil samples are the scintilla of evidence that link the accused to the commission of the offence and that the prosecution has established a prima facie case against the accused that warrants him being placed on his defence to answer to the charges; refer to the renowned case of **Bhatt vs Republic (1957)**;
11. The accused is found to have a case to answer; his rights and options will be put to him for election before he presents his defence.

Orders Accordingly.

Dated, Signed and Delivered at Nyeri this 13th day of February, 2020.

HON.A.MSHILA

JUDGE