



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 15 OF 2014**

**REPUBLIC.....PROSECUTION**

**VERSUS**

**DANIEL MWANGI CHEGE.....ACCUSED**

**RULING**

1. The accused **Daniel Mwangi Chege** is charged with offence of murder contrary to section 203 as read with section 204 of the Penal Code Cap. 63 Laws of Kenya.
2. Particulars being that on the 6<sup>th</sup> and 14<sup>th</sup> August 2014 at unknown time at Alango Arba within Garissa County jointly with others not before court murdered **Lawrence Oluoch Ogoro**.
3. The prosecution called 8 witnesses and closed its case and court has been called upon to make a ruling on whether there is a case to answer to warrant accused to be put on his defence.
4. The parties were at liberty to put submissions but only prosecution opted to file the same.
5. The issues are where only prima facie basis has the prosecution established the ingredients of murder to warrant accused to be put on his defence?
6. Through **PW1 Festus Mulwa Mutungi**, the prosecution demonstrated that on the 14<sup>th</sup> August, 2014, after realizing that one of his employees, the deceased herein was missing he made a report to Garissa Police Station. PW1 was a Director of Bora Mineral Products which company had employed the deceased as a site supervisor. The accused herein was a plant operator operating an excavator.
7. The evidence was that the last time before the deceased disappeared, he had left with the accused person to pick the excavator bucket from the neighbouring company site but the deceased never came back. It is later on that they found the clothes resembling those of the deceased at the scene next to the neighbouring mining company.
8. Through **PW7** a police officer who also went to the scene confirmed to have found parts of human body to include scalp. Also found were personal documents including identification card number [xxxx] bearing the names of the deceased, the driving license among other items.
9. At the scene, there was a heap of soil which physically indicated that it had been placed by an excavator since there were clear marks of the excavator since the traces of excavator chain marks led to the scene.
10. Through **PW8**, the doctor who produced both the postmortem and the report relating to the pieces of human body parts to include:
  1. *Mummified skin of left foot.*
  2. *Skin of the right hand.*
  3. *Portions of scalp.*
  4. *One portion of rib.*
11. The doctor concluded that the biological remains based on morphology and anthropological techniques were of human species. The doctor also opined that the death was unnatural.

12. On whether the biological remains recovered belonged to the deceased, the pieces of the remains belonged to a human being. The national identity card number [xxxx] in the name of Lawrence Oluoch Ogoro and the pieces of tattered clothes investable points to the remains as belonging to Lawrence Oluoch Ogoro.

13. On how was the death caused, though not conclusive even from the report by the doctor, the death was unnatural. On the possibility that it is the wild animals that killed the deceased, from the scene, it will appear the wild animals just unearthed what had been buried and covered using the excavator.

14. The evidence showed that the heap of soil at the scene had been placed by an excavator since there were clear marks of the excavator shovel. There were also traces of the excavator chain marks heading to the scene. Wild animals are innocent.

15. On who caused the death, the person who went to the site with the deceased was the accused herein and also PW1 had indicated that some 400 litres of diesel which had been stored by the accused and another person was missing and had instructed the deceased to investigate. The deceased went missing after giving out the report on the investigations.

16. The totality of the above is that the prosecution has established a prima facie case to warrant accused to be put on his defence.

**DATED, DELIVERED AND SIGNED AT GARISSA THIS 4<sup>TH</sup> DAY OF FEBRUARY, 2020.**

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**C. KARIUKI**

**JUDGE**