



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL CASE NO. 11 OF 2012

[FORMERLY NYERI HCCR 5 OF 2011]

REPUBLIC.....PROSECUTOR

VERSUS

JOHN GITAH MWANGI.....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 27th January 2012 at Gataragwa village, Karunge Sub-Location, Karunge Location in Muran'ga County, he murdered *Jonna Mwangi*.
3. He pleaded *not* guilty. The prosecution lined up *seven* witnesses. The prosecution's case is founded largely upon *circumstantial* evidence. For instance, PW2 testified that the accused knocked on his door on the material night at about 3:30 a.m. but he refused to let him in. The accused later told him that he and the deceased were running away from the police over a "toy gun" and that the deceased was arrested.
4. However, the police at Nyakianga Station had no such record. PW2 claimed that when he and the police visited the house of the accused, they recovered a blood-stained jacket (exhibit 1). The jacket and some samples were submitted to the Government Chemist's Department for analysis.
5. According to PW3, PW4 and PW6 the police also recovered a toy pistol, 5 pangas and 2 somali swords from the accused's house (exhibits 2 to 4). PW3 testified that a blood-trail led the search party towards Ngondo River. The naked body of the deceased was eventually found on 30th January 2012. It bore stab wounds on the neck, head and the back.
6. The pathologist (PW7) testified that the death was caused by a "*severe head injury secondary to a blunt object*".
7. Both the learned prosecution counsel; and, the learned defence counsel opted *not* to make submissions.
8. 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 *seven* witnesses, I find that the Republic has established a *prima facie* case against the accused.
9. 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 16th day of April 2020.

KANYI KIMONDO

JUDGE

ORDER

In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this ruling has been delivered in the absence of the accused, his counsel and Prosecution

Counsel. I accordingly make the following order and directions:

- a. A certified copy of this ruling shall be served forthwith on the accused (who is out on bond), his counsel of record and the Prosecution Counsel.
- b. The rights of the accused under section 306 (2) of the **Criminal Procedure Code** shall be explained to the accused on the next mention before the Judge or at date of defence hearing whichever falls earlier.
- c. A convenient date for defence hearing shall be allocated on priority by the Deputy Registrar when normal court sessions resume.

KANYI KIMONDO

JUDGE

Ruling read in chambers in the presence of:

Ms. Dorcas, Court Assistant.