



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL CASE NO. 76 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

DAVID NJUGUNA.....RESPONDENT

RULING

DAVID NJUGUNA is charged with the offence of Murder, contrary to *Section 203* as read with *Section 204* of the *Penal Code*.

The particulars of this offence are that on the 7th day of November, 2014 at Moi's Bridge Township, Moi's Bridge Sub location, in Eldoret West District, within Uasin Gishu County, the accused jointly with others not in court murdered *Muheri Mulati*.

The prosecution case is that *Samuel Wanjohi Kanyungu* (PW-2) is the proprietor of Modern Bar/Club, at Moi's Bridge. *John Kanyungu* (PW-4) was working in a hotel within the said club while *Jared Odhiambo Ochieng* (PW-1) was a night watchman, guarding a chemist within the same building housing Modern Bar/club. On the night of 6th to 7th November, 2014 PW-2

was in his club between 11:50 p.m and 12:00 midnight. The accused who was allegedly in the said bar started causing trouble. He started a fight therein. The club watchman chased him away. He said he was going to kill somebody in the Bar. He went away. After about 15 to 20 minutes he returned in company of about 15 to 20 young men. They were armed with runigus and stones. They threw the weapons at the club. PW-1 was able to identify the accused person among the group that was throwing bottles of beer and stones at each other. PW-1, PW-2 and PW-4 had locked themselves inside the Bar. All the bar window panes were broken.

At around that time a young man approached from outside and while near the entrance to the National Bank which is adjacent to the Bar, the group of the assailants outside, attacked him. By then those in the bar had contacted the police about the attack. PW-2 was able to see what was happening outside through the window. After about 20 minutes there was calm. Customers who were inside the Bar said they wanted to go home. The door was opened and some left. Those who left soon made noise that there was an injured young man who was bleeding profusely. PW-4 went there and saw him. He called the OCS Moi's Bridge police station. Police

went to the scene and collected the victim. Later they were told by the police that the victim died.

Post mortem was conducted at Kitale District Hospital mortuary. The body had an abrasion and swelling on the right side of the head. There were no defensive bruises noted. There was evidence of bleeding from nose and ears. There was haematoma on the right parietal region of the head; blunt (dent) was noted at the particular region. The doctor was of the opinion that the cause of death was severe head injury.

The accused was then arrested and charged with the offence carried in the information sheet.

At this point, the court must determine as to whether the evidence establishes a prima facie case against the accused so as to warrant him be placed on his defence.

The evidence of PW-1, PW-2 and PW-4 shows that the incident happened at around midnight. Though they alleged they saw, they did not disclose the source of light that enabled them see inside and outside Modern club. Generally, one can't be able to see at night unless there is some source of light of which the person claiming to had been able to see must disclose to court. The court must be satisfied that the disclosed source of light was adequate to enable the witness see what is claimed to had been witnessed. In this case such is lacking. It is therefore doubtful that PW-2 saw the accused causing fight in the bar, and when he was thrown out vowed to kill someone in the Bar. It is also doubtful that the accused was seen outside the bar in a group of 15 to 20 young men throwing runigus, stones and beer bottles at the club and that thereafter attacked on the deceased near the National Bank, of which attack led to his death. The existing doubts are resolved in favour of the accused person. If accused is to be placed on his defence and opts to remain mute, I do find that the available evidence cannot lead to his conviction. As such the evidence is short of establishing a prima facie case against him, and he is accordingly acquitted of the offence under *Section 210* of the *Criminal Procedure Code*. He is set free unless otherwise lawfully held.

S. M GITHINJI

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 3rd day of April, 2019.

In the presence of:-

Mr. Ondiek holding brief for Mr. Kibii for accused

Ms. Mumu for state /prosecutor

Mr. Mwelem- Court Assistant