

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE N O. 10 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

JOSEPH MWANGI WAIRIMU.....ACCUSED

RULING

The accused, Joseph Mwangi Wairimu is charged with murder contrary to section 203 as read with section 204 of the Penal Code. This offence was committed on 3rd day of January 2018 at Gikomba along new Pumwani Road in Nairobi. The victim is Alex Kimenju Maigwa, deceased.

The prosecution has closed its case after presenting evidence of ten (10) witnesses. In brief the evidence shows that on the evening of 3rd January 2018 the deceased was in a Pub called Magda with Kennedy Michuki, PW1, and Daniel Mutugu Mwangi, PW2 drinking beer and watching news. At around 7.40pm the accused entered the Pub and called the deceased to accompany him outside. It is stated in evidence that the deceased was at the time the driver of a motor vehicle belonging to the accused. Shortly after the accused and the deceased went outside, Kennedy and Daniel learned that there was a fight outside the Pub. They went out to find out who was fighting. They found the accused beating the deceased, hitting him with fists and hitting his head against a stone wall. The two witnesses learned that the accused was claiming that the deceased had caused an accident on the vehicle. The accused left shortly thereafter. The deceased also left the scene after telling PW1 and PW2 that he was able to go home.

On the same night at about 9.00pm the deceased booked a room at Kajiado Guest House in Eastleigh. He was served by Cosma Kibuthu Wachira, PW3. He was allocated room 2B located near the office where PW3 was. The deceased paid Kshs 300 for the room and went to his room. Shortly thereafter the deceased was seen by PW3 going to the shop in front of the Guest House to buy soda and return to his room. In the morning at about 7.00am the deceased was seen by PW3 going to the toilet located outside his room and returning to his room. At about 8.00am PW3 heard someone breathing with difficulty and went to check. He found it was the deceased. The door of room 2B was ajar. PW3 entered. He found the deceased lying on the ground with his legs stretched out. He was foaming in the mouth.

PW3 called Joyce Wangechi (PW4) the manager of the Guest House. Joyce called for an ambulance. The deceased was placed in the ambulance but died when the nurses were resuscitating him. The matter was reported to the police. After investigations the accused was arrested and charged with this offence.

I have considered the evidence and the submissions by the defence team. The gist of the submissions is that the prosecution has not established a prima facie case against the accused person. It was submitted that the evidence on record does not meet the threshold in **Ramanlal Trambaklal Bhatt v. Republic (1957) E. A. 332**. This court was urged to make a finding that the accused has no case to answer and acquit him.

I have considered all the evidence. It discloses that the death of Alex Kimenju Waigwa occurred on 4th January 2018. The cause of that death according to Dr. Charles K. Muturi (PW9) was severe head injury due to blunt force trauma. I have considered the evidence of PW1 and PW2 who were at the scene. These are eye witnesses. They knew the accused and the deceased before that date. They witnessed the accused hitting the head of the deceased against the wall. When this evidence is considered together with that of the doctor who found head injuries as the cause of death of the deceased, this court finds a connection to lead me to conclude that the prosecution has established a prima facie case against the accused. I therefore find that the accused has a case to answer. He shall be placed on his defence in compliance with section 306 (2) of the Criminal Procedure Code. To make a contrary finding would not be in the interest of justice under the circumstances. Orders shall issue accordingly.

Dated, signed and delivered this 13th day of June 2019.

S. N. Mutuku

Judge