



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HCCR NO. 69 OF 2017

REPUBLIC.....PROSECUTION

-VERSUS-

JOHN MAUNDU.....ACCUSED

RULING

1. **John Maundu** the accused herein was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.

The particulars are that the accused on 24th September, 2013 t within Makueni County, murdered **WM**.

2. The accused was first arraigned before the High Court at Machakos on 15th October, 2013. His plea was however taken on 13th February, 2014. The matter came up for hearing several times before the High Court at Machakos but there is no single day it took off for hearing. On 1st November, 2017, the case was transferred to Makueni High Court following the court's establishment.

3. In spite of the summons and warrants of arrest issued against the witnesses the matter never took off for hearing. On 19th February, 2019 the court issued summons for the DCIO Mukaa to come and explain the failure to bond witnesses. Another summons was issued on 29th April, 2019 for the said DCIO to appear on 15th May, 2019.

4. The said officer did not attend court and upon being satisfied that the officer had been served, the court issued a warrant of arrest against him. On 16th May, 2019, the court was informed by Ms. Owenga for the DPP that the DCIO Mukaa was not able to attend court because he was undertaking examinations at Kiganjo. Present in court was the investigating officer in this case Senior Sergeant Francis Okungu (No.58486).

5. He explained how he took over the file in 2018 when he reported at Salama police station but had tried in vain to bond the witnesses since they had relocated.

6. The Investigating Officer indicated that he had learnt that the civilian witnesses were in Machakos while the former investigating officer was at Kasarani police station. The matter was then fixed for hearing on 21st May, 2019 with an order for witness summons to issue for all the witnesses.

7. On 21st May, 2019, when the matter came for hearing there were no witnesses in court save for the Investigating Officer. Sufficient time was given for him to avail his witnesses in vain. He finally took the witness stand as PW1.

8. He explained the efforts he had made to get the witnesses in vain. He summarized what he had read from the witness statements which showed that the deceased was the accused's son aged 2 ½ years. The witness E is the accused's wife while Tony is the accused's relative. Both of them refused to attend court to testify.

9. The above is a brief summary of what is before this court in terms of proceedings and evidence in respect to the deceased's death. PW1 who is the current Investigating Officer did not undertake any single investigation in this case. His evidence is therefore hearsay evidence. Even the officers who arrested the accused and the doctor who conducted the postmortem did not testify. There is therefore no evidence to confirm the death of the deceased. PW1 never saw the deceased's body.

10. The accused has been in custody for almost six (6) years since his arrest. For all these years no single witness has testified in this case save for the Investigating Officer (PW1) who testified on 21st May, 2019. His evidence is pure hearsay and is the only evidence being relied on by the prosecution to prove its case against the accused person.

11. This is a real mockery of justice. Nothing has been placed before this court worth any consideration in terms of a case to answer. I find no reason at all to make me even try to consider placing the accused person on his defence.

12. **I therefore record a finding of not guilty and acquit the accused under Section 306(1) Criminal Procedure Code.**

13. **The accused shall be released forthwith unless otherwise held under a lawfully separate warrant.**

Orders accordingly.

DELIVERED, SIGNED & DATED THIS 7TH DAY OF JUNE 2019, IN OPEN COURT AT MAKUENI.

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H. I. ONG'UDI

JUDGE