

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CRIMINAL CASE NO. 32 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

JOHNSON GICHURUR THUKU.....ACCUSED

RULING

JOHNSON GICHURU THUKU 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 23rd day of March 2014 at Burnt Forest Trading Centre in Eldoret East District, within Uasin Gishu County, the accused murdered *Paul Karanja Gitu*.

The prosecution case is that on 23rd March 2014, *Daniel Mungai Gitu*, the PW-1 in this case, was in his house at Burnt Forest. He was with his wife namely *Faith Ngoiri*. A person called *Mungai* visited them and told PW-1 that his brother called *Paul Karanja Gitu* had been hit by someone and was rushed to Burnt Forest Hospital. PW-1 and his wife rushed to Burnt Forest District Hospital. They found the said injured person unconscious, in the hospital bed. The right side of his head had a depression injury. First Aid was administered on him before he was put into an ambulance and rushed to Moi Teaching and Referral Hospital. He was scanned and the doctors said they had no bed in the Intensive Care Unit. They took him to St. Luke's hospital. PW-1 called their father and informed him about the incident. The father who is PW-2 in this case rushed to the hospital and saw the deceased. He noted that the deceased had two holes in his head. He went to the police station but was not allowed to see the suspect. On 28th March, 2014, the deceased died. *Mungai* had told PW-1 that the deceased was hit by *John*. PW-1 had however not known the said John by then.

Dr. Benson Macharia, a pathologist at Moi Teaching and Referral Hospital, conducted an autopsy on the body of the deceased on 1st April 2014. He noted that the deceased had a stitched forehead laceration measuring 1.5 cm. The skin covering the head was swollen. The right eye was congested. There was laceration on the both legs big toes. There were also multiple fractures of the skull on both sides. There was extensive blood clots covering the brain. Other systems were normal. He was of the opinion that the cause of death was severe head injury due to blunt force trauma. He issued burial permit No. 570164 and signed the report. He produced it as Exhibit 1.

The last witness called was PW-4, an "Investigating officer" who only took over the file in the case after the initial investigating officer retired from the police service. The prosecution at this point closed their case.

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

In this case the prosecution called no eye witness as to how the deceased got injured and by who. A person namely *Mungai*, who reported the incident to PW-1, was not called as a witness. Though PW-1 alleged that the said *Mungai* informed him that the deceased was injured by *John*, that is hearsay evidence which is inadmissible. PW-1 had not even known the said *John*, and there is no evidence that the alleged *John* is the accused person in this case. We do not know how the accused herein was connected to the offence, traced, arrested and charged. The said vital link is missing in the prosecution case.

The only evidence we have is the opinion evidence of PW-3 that the deceased died out of severe head injury, due to blunt force trauma. This, on its own, is short of establishing a prima facie case against the accused, of which would deserve him be placed on his defence. As such the prosecution case fails at this stage and the accused herein is acquitted of the offence of murder, contrary to *Section 203* as read with *Section 204* of the *Penal Code*, under *Section 210* of *Criminal Procedure Code*. He stands set free forthwith unless otherwise lawfully held.

S. M GITHINJI

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 8th day of October, 2019.

In the presence of:-

Mr. Komen for the accused

Mr. Chacha for state /prosecutor

