

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO. 50 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

PATRICK WACHIRA WAMBUI ALIAS NDUNG’U.....ACCUSED

RULING

Patrick Wachira Wambui alias Ndung’u, the accused, is charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 23rd day of September 2018 at Karen Stage, Karen area of Langata Sub-county the accused murdered Jackson Oganda Nyachio. The accused pleaded not guilty to this charge.

The case for the prosecution has concluded after the evidence of nine (9) witnesses. It is now the duty of the court to consider the evidence on record and determine whether the prosecution has discharged its duty of establishing a prima facie case to warrant calling the accused to testify in his defence.

Evidence shows that the accused and the deceased were both touts at Karen Stage in Karen shopping centre. On 23rd September 2018 around 6.00pm a disagreement arose between them. The accused attacked the deceased and banged him against a motor vehicle three times. He also hit the deceased on the face with a fist knocking him down. The accused sat on the deceased when he was on the ground and banged his head against the concrete floor several times. The deceased was not able to move and had to be removed from the road and placed on the side. Evidence shows that one Ngotho (not a witness) also a tout attempted to stop the accused from assaulting the deceased. The accused turned on Ngotho and started assaulting him. It is at this stage that PC Boaz Kipmurgor (PW6), a police officer from Karen Police Station, came by from the shopping centre. He found the accused assaulting Ngotho although in his testimony he did not name the person the accused was assaulting. The accused, who knew PW6 as a police officer, escaped on seeing him. PW6 confirmed finding one man injured and leaning on the wall. This man, the deceased, was bleeding on the mouth and nose according to the evidence of PW6. He advised him to report the matter at the Police Station. The accused, assisted by Julius Yulu Chengo, PW1, reported the matter at Karen Police Station. The report was received by PC Abdullahi Aden, PW5, at around 19.55pm. PW5 observed a cut on the deceased’s head and bleeding from the mouth. He advised them to go to hospital.

The deceased did not go to hospital as advised. Instead, Julius took him to board a vehicle to go home in Elbulbul. Julius did not accompany him. The following morning Julius went to check on the deceased. He found him inside the house in critical condition. He was taken to hospital on 24th September 2018 by his mother Teresia Kerubo, PW2. He died while undergoing treatment at Kenyatta National Hospital on 25th September 2018.

The evidence of Dr. Bernard Owino Midia, PW7, shows that the deceased suffered multiple injuries mainly to the head. The doctor formed an opinion that the deceased died as a result of head injury due to blunt force trauma. These findings are consistent with the evidence that the deceased was assaulted on the head by having his head banged on the ground.

After the conclusion of the case by the prosecution, parties intimated that they would wish to submit before this court could make its ruling as to whether the accused has a case to answer or not. This was on 18th September 2019. Directions were given that submissions be made on 17th October 2019. On that Mr. Ondieki, counsel for the accused was not in court. There was no information about his whereabouts. The matter was adjourned to 24th October 2019 with directions that the Deputy Registrar should notify Mr. Ondieki of the new date for submissions. By a letter dated 18th October 2019 that notice was issued. However on 24th October 2019 Mr. Ondieki was not in court. Again there was no information on his whereabouts. This court directed that it will proceed to deliver a ruling based on the evidence on record and the law. It was the view of the court that such an order would not prejudice the accused or the prosecution.

I have examined the evidence closely. I have noted that the evidence of PW1, Julius, is clear that the accused assaulted the deceased by banging his head on the ground. PC Kipmurgor, PW6, also found the accused at the scene. At the time, the accused was assaulting another man while the deceased who was already injured and was bleeding from mouth and nose was leaning on the wall. PW5 was told the court that the accused had assaulted the man leaning on the wall, the deceased. The evidence of the doctor confirms head injuries on the deceased as the cause of death of the deceased. I have also considered the conduct of the accused after this offence was committed. He escaped from the scene. This was testified to by PW1 and PW6. He was arrested by PC Joseph Njuguna, PW7, on 25th September 2018 at Ngong Race Course Betting Casino. PW7 was assisted by Joel Nyachio, PW4.

The evidence against the accused is consistent and reliable. I find it sufficient. It establishes a prima facie case against the accused. The evidence places the accused at the scene. There is eye-witness account by PW1 that the accused assaulted the deceased. He was found at the scene by a second witness, PW6. The injuries found by the pathologist on examination of the body of the deceased are consistent with the injuries described by witnesses. In the end I find that the accused has a case to answer and shall be placed on his defence. In compliance with section 206 (2) of the Criminal Procedure Code the accused is hereby informed of his right to address this court on the manner in which he

intends to give his defence and whether he will be calling any witnesses. Orders shall issue accordingly.

Dated, signed and delivered this 21st day of November 2019.

S. N. Mutuku

Judge