

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HIGH COURT CRIMINAL CASE NO.38 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

SOLOMON MULOVE MUSYOKIACCUSED

RULING

Solomon Mulove Musyoki, 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 29th day of November 2010 at Ole Serean Area opposite Airtel Headquarters along Mombasa Road in Nairobi County he murdered Erick Nzioki. The accused has denied committing this offence. He is represented by Mr. Wamiti Njagi, advocate.

At this stage of the trial after the prosecution has closed its case, the court is required to analyze and consider all the material evidence tendered to determine whether a prima facie case has been made out against the accused person to warrant his being put to his defense. The prosecution has presented fourteen (14) witnesses in total. They adduced evidence in support of its case against the accused person. Their evidence shows that the accused herein and Eric Nzioki, the deceased, were close friends prior to the death of the deceased. The accused was known by the parents and friends of the deceased as a close friend and he used to accompany the deceased to his rural home at Kaani in Machakos. The deceased used to spend nights at the home of the accused in Nairobi and sometimes he would spend weekends at the accused's home.

Sometime in October or November 2010 the accused travelled to Djibouti to do some work there. The details of what he was doing in Djibouti are scanty. On return to Kenya on 24th November 2010 he was picked up from the airport by the accused and after depositing his bags at the home of Miriam Kasui Kasina (PW5), his aunt, at Racecourse Kariokor, the deceased went to spend the night at the home of the accused. He left for Machakos on 27th November 2010 and returned to Nairobi on 29th November 2010. On that day he met several people including the accused, Cooper Kilonzo (PW2) and Francis Kioko Mbate (PW6) at Tanager Restaurant in downtown Nairobi. They had some drinks. He left the place in the company of the accused and another unidentified person. He was not reachable from the evening of 29th November 2010 and did not go home to his aunt's place as promised. The deceased was not reachable the following day on 30th November 2010 as efforts by relatives and friends to communicate with him bore no fruits. His body was found at Ole Serean near Mombasa Road in the morning of 30th November 2010. SGT Peter Mwangi (PW9) who took photographs of the scene describes the body of the deceased as lying on the grass in blood stained clothes with four stab wounds on the chest and missing genitals.

At the time the body of the deceased was recovered, the family did not know his whereabouts. A report of a missing person had been made at Central Police Station and as the family waited for the police to act on their report of a missing person, they decided to check for the deceased in hospitals and mortuaries. They started with the City Mortuary. This is where they found the body of the deceased.

The data from Airtel and Safaricom connected the accused with one of the phones (Ex. 15) that deceased had been using. This phone a Nokia 1616 was traced to Francis Mutua Kivuva (PW3) who told the court that it was given to him by the accused to use in communicating with him. A SIM card bearing telephone number 0724***** which had been paired with the second phone was also found in accused's possession. Data from Safaricom showed that the accused had accessed the deceased's M-pesa account in

respect of 0724***** and had made various transactions in February 2011 in regard to the deceased's M-pesa account using his telephone number 0722*****.

I have considered the entire evidence and the rival submissions including the cited authorities. Counsel for the accused, Mr. Njagi, urges that the prosecution has failed to establish a prima facie case against the accused. I am of the contrary view. Although the accused was not the only person with the deceased on 29th November 2010, evidence shows that he had access to the deceased's SIM card for the Safaricom number and transacted by withdrawing money and depositing money in deceased's M-pesa account. There is also the issue of Ex. 15 Nokia 1616 which at one time was being used by the deceased and which the accused gave to Francis Mutua sometimes in early 2011 and through which the accused was arrested.

Taking into consideration of all the evidence so far tendered by the prosecution, it is my view that the prosecution has established a prima facie case against the accused person. Consequently, I find that the accused has a case to answer. In compliance with Section 306 (2) of the Criminal Procedure Code, I order that the accused shall be placed to his defense. I invite him to address this court in the manner he wishes to give his defense, whether he will take the oath or testified without swearing and whether he will be calling any witnesses to his defense. Orders shall issue accordingly.

Delivered, signed and dated this 1st of February 2018.

S. N. Mutuku

Judge