



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HCCR NO. 142 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

MATHEW MULI NUNDU.....1STACCUSED

HENRY MUKOMA NZIOKA.....2NDACCUSED

RULING

1. By information dated 19/04/2010 the 2 accused persons were charged with offence of murder contrary to section 203 and 204 of the Penal Code.
2. Particulars being that on 12/09/2008 at Sololo village, Kilili Location, Makueni District of Eastern province jointly murdered Kamuti Nzioka Lavu.
3. The accused pleaded not guilty and the matter went into full trial. At the close of the prosecution case after calling 10 witnesses, the parties urged the court to make a ruling on whether to put the accused on their defence relying on the evidence on record.
4. PW1 Faith Mwikali Mwendwa testified that, the deceased was cousin to her husband. On the material day, she saw deceased at about 11.00 a.m. when he passed by her home. He asked for food. He told her he was going home.
5. She went to women group meeting at 2.00 p.m. and found deceased lying alongside the road. She woke him up and talked to him. He said he was going home. He was drunk.
6. Later she saw him unconscious in the morning next day at 6.00 a.m. but at a different place 15 meters from where she had seen him earlier. She did not know what caused his death.
7. PW2 Miriam Mbithe Kituku, Assistant Chief got report from Muti Kamuti that his father had not returned home. He later learned that he was found alongside road dead. He knew him. He was a habitual drunkard. He did not hear of anyone being implicated.
8. He went to the scene and observed the body. He saw injuries on the right hand side of the body. He did not know who killed him.
9. PW3 Monica Syokau Kamuti, Deceased wife got telephone call and went home. When deceased died, she was at Kimana. The body was taken to the mortuary.
10. PW4 Prisca Ndenya Mulei, daughter of the deceased said that on 13/09/2008 at 6.00 a.m., she saw two people a head of her. They were carrying her father the deceased and on reaching near them, they released him and ran away. She did not see anybody hit him.
11. The 1st accused is her uncle. Her father was left lying down when they ran away.
12. PW5 Damaris Subula Mulei daughter to the deceased said that on 13/09/2008 at 6.30 a.m., she saw 2 people who she did not identify. They were carrying a person whom she believed was her father.
13. Then she saw her father lying down along roadside. She had seen the 2 people prior seeing her father. She did not see them hit deceased. She did not know who injured her father nor know who killed him.
14. PW7 Margaret Mukulu was called by Mbula, daughter of the deceased on 12/09/2008 at 7.00 a.m. She did not witness any incident.

15. PW8 Jemina Kabibili Mutua, brother of deceased went to the scene to confirm his brother was dead.
16. PW9 Francis Mbuvi Makai learned of deceased death but did not witness of the incident. He did not know who killed the deceased.
17. PW10 was Cpl. Richard Langat, stationed at Sultan Hamud crime section. He was the investigating officer. He witnessed the postmortem and produced it as defence conceded and was marked as – PEX 1.
18. The postmortem produced indicated that the deceased had injuries all over the body. The doctor formed opinion that the deceased died of asphyxia.
19. From the entire prosecution evidence, it appears only two accused persons were seen last with the deceased when they were seen holding, carrying him and upon seeing the daughter, they abandoned him and ran away.
20. On the *prima facie* basis, the 2 accused persons have to explain the circumstances in which they were allegedly seen carrying deceased and abandoned him wherefore he died same day. He had multiple injuries and died of asphyxia.
21. The court thus finds the 2 accused persons have a case to answer and they are put on their defence.

SIGNED, DATED AND DELIVERED THIS 2ND DAY OF JULY 2018, IN OPEN COURT.

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C KARIUKI

JUDGE