



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MAKUENI**

**HCCR NO. 49 OF 2017**

**FORMERLY MACHAKOS HCCR NO. 57 OF 2017**

**REPUBLIC.....APPLICANT**

**-VERSUS-**

**ABDI ABDILLE ALI *alias* ISIOLO.....APPELLANT**

**RULING**

**INTRODUCTION**

1. The accused was charged with offence of murder contrary to Section 203 as read with Section 204 Penal Code.
2. Particulars being that on 27/09/2014 at Sultan Hamud Township in Mukaa District, Makueni County jointly with others not before court murdered Seif Shutu Kazungu.
3. The accused pleaded not guilty and matter went into trial. The prosecution called eight witnesses and closed the case. The court is called to rule on whether there is a case to answer.
4. The prosecution case in summary was that; PW1 says the deceased and accused quarreled over the flashing of motor bike light to accused and accused in return flashed light with his torch to the deceased on 26/09/2014 around midnight. Quarrel ensued between the two.
5. As they quarreled, the deceased then started saying the accused had stabbed him and accused ran away into the darkness.
6. The deceased fell down and he was bleeding from the neck. DW1 took him to hospital accompanied by a fellow watchman. Many people came to the scene. He learnt later the deceased passed on.
7. PW2 witnessed the deceased and accused fight. PW1 told him to go and separate them. The deceased started saying he had been stabbed. He was bleeding from the neck. They rushed deceased to hospital.
8. PW3 identified the deceased body for the post mortem. He was his brother.
9. PW4 was also deceased brother who got a call and rushed to the hospital and saw his deceased brother's body.
10. PW5 was also deceased brother who got a call and went to hospital to see his deceased brother and found he had passed on.
11. PW6 was PC Kennedy Koech who got information of the incident and proceeded to hospital and then to the scene of crime. He found the deceased's body lying on bed. He saw wound on left side of the neck.
12. PW7 also visited hospital and found deceased had died.
13. PW8 Doctor Lyn Martha Kiema conducted post mortem on 27/09/2014, and produced the report in court. The cause of death was by severe hemorrhage due to deep stab wound on the anterior neck.
14. The prosecution closed its case and parties were to put written submissions but none has tendered the same.

15. The court is to determine whether there was a *prima facie* case established.

16. PW1 witnessed quarrel between deceased and accused and heard deceased say that he was stabbed. He witnessed a wound on the nape of the neck. He rushed him to hospital where he died later.

17. PW2 witnessed the fight by the two accused and deceased and deceased was stabbed by accused in the course of the fight.

18. The doctor, PW8 has confirmed with postmortem report that the deep cut on the anterior of neck caused the hemorrhage which caused death.

19. Thus the court finds that the accused has a case to answer and he is put on his defence.

**SIGNED, DATED AND DELIVERED THIS 20<sup>TH</sup> DAY OF SEPTEMBER, 2018 IN OPEN COURT.**

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**C. KARIUKI**

**JUDGE**