



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CRIMINAL CASE NO. 37 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

DANIEL KENYANYA NYAATA.....1ST ACCUSED

SWANYA KEBURAGI.....2ND ACCUSED

EVANS KEBURAGI JAMES.....3RD ACCUSED

ERIC SWANYA KEBURAGI.....4TH ACCUSED

ISAAC MOSOMI ONSOMBI.....5TH ACCUSED

GEOFFREY KIBURAGI NYAMBAGI.....6TH ACCUSED

RULING

1. The accused, DANIEL KENYANYA NYAATA, SWANYA KEBURAGI, EVANS KEBURAGI JAMES, ERIC SWANYA KEBURAGI, ISAAC MOSOMI ONSOMBI and GEOFFREY KIBURAGI NYAMBAGI were charged with murder of BOCHERI ONSOMBI contrary to section 203 as read with section of the Penal Code (Chapter 63 of the Laws of Kenya). It was alleged that they murdered the deceased on 4th March 2014 at Bonyatachi Sublocation, Gucha District within Kisii County.

2. After the accused denied the charges, the matter did not commence until 28th November 2016 when Okwany J. took the testimony of Hesbon Omyoni Onsombi (PW 1). The only other witness who testified on 16th July 2018 was the Scenes of Crime Officer, PC Charles Kitur (PW 2). I took his testimony after Okwany J. was transferred.

3. The testimony of PW 1 was that the 1st and 3rd accused took the deceased to a nearby toilet, tied her up and set her body aflame. PW 2 came to the scene on the next morning and found what appeared to be charred remains of a human body. The prosecution did not call any further witnesses as its counsel informed court that the remaining witnesses had disappeared and it was difficult to locate them. It elected to close its case.

4. In the circumstances, I do not find sufficient evidence to put the accused on their defence for several reasons. The deceased's body was not identified nor was the cause of death and the accused were not put at the scene. I enter a verdict of not guilty under section 306(1) of the Criminal Procedure Code (Chapter 75 of the Laws of Kenya).

5. Consequently, the accused are acquitted of the murder of BOCHERI ONSOMBI and are set free unless otherwise lawfully held. The sureties for the other accused are discharged.

Dated and delivered at Kisii this 19th September 2018.

D.S Majanja

Judge

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions

Mr. Kaburi, Advocate for 4th, 5th and 6th Accused

Mr. Nyangacha for 1st, 2nd and 3rd Accused