



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

HCRC NO. 3 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

BOAZ SAIYA MUDOGO.....ACCUSED

R U L I N G

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 10th January, 2014 at Nguvuli bridge, Nguvuli village, Luanda 'K' sub-location, Chesero location in Kakamega North District within Kakamega County he murdered Boniface Kulecho Shimaka (herein referred to as the deceased).

The prosecution case is that one Patrick Amunda Saul PW7 was employed by the mother of the deceased as a motor cycle taxi rider. The deceased was in charge of the motor cycle.

That on the material day Patrick PW7 closed work at 7 PM. He ferried the deceased and his brother Aggrey Shimaka PW1 home on the motor cycle. On getting home Patrick asked them to escort him to his home. They boarded the motor cycle and started the journey towards the home of Patrick PW7. Patrick was riding the motor cycle. That on reaching the Isiu bridge they were attacked by the accused person. The accused stabbed the deceased and Aggrey (PW1) with a knife. Aggrey escaped from the scene.

Meanwhile Robert Odinga alias Rashid PW2 was at his home which is near the said bridge. He heard a person screaming at the bridge. He went there. He found one person sitting on a motor cycle. He identified him as Patrick PW7. One person was chasing another person. The person who was being chased ran towards him. He saw it was Boniface, the deceased, who was a person well known to him. He identified the chaser as Boaz Saiya, the accused, who was also known to him. The accused had a knife. The accused threatened him with the knife as he gave chase to the deceased. He gave way. The accused then stabbed the deceased 4 times. The accused then escaped. The deceased was screaming. A neighbour **Edwani Sindani PW6** heard the screams. He went to the place. He and Rashid PW2 placed the deceased on the motor cycle that was being driven by Patrick PW7. Rashid and Patrick rushed him to Malava District Hospital and then to Kakamega County Referral Hospital. The deceased required blood transfusion but there was no blood. They were referred to Webuye Hospital. They went there. The deceased died on the following day.

On the same evening a report of the incident was made at Kabras Police Station. The accused was then escorted to Kimanget Ap Post by a village elder. On the following day he was picked from the post by IP Mbai PW9 of Kabras Police Station and taken to Kabras Police Station.

On 13/1/2014 a post-mortem was performed on the body. The body was found with multiple cut wounds on the abdomen that traversed the large intestines. The cause of death was ascertained to be due to severe bleeding following stab wounds. After investigations the accused was charged with the offence. He denied the charge. During the hearing the post-mortem report was produced as exhibit.

At the close of the case for the prosecution, the court is required to rule on whether the prosecution has established a prima facie case against the accused.

A prima facie case, it has been held is:

“... One on which a reasonable tribunal, properly directing its minds to the law and the evidence could convict if no explanation is offered by the defence”... see *Ramanlal Trambaklal Bhatt VS Republic(1957) E.A. 332.*

The deceased died out of stab wounds. The prosecution witnesses PW1, PW2 and PW7 are alleging that they saw the accused inflicting the fatal injuries on the deceased. I find that the prosecution has established a prima facie case against the accused requiring him to make a defence. The accused therefore has a case to answer and is accordingly placed on his defence.

Delivered, dated and signed at Kakamega this 11th day of September, 2018

J.NJAGI

JUDGE

In the presence of:

.....for state

.....for accused

.....Court Assistant