



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HCCR NO. 21 OF 2017

REPUBLIC.....PROSECUTION

VERSUS

LAWRENCE MUTISO MWANZIA..... ACCUSED

RULING

INTRODUCTION

1. The accused was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code, Cap 63 of the Laws of Kenya.
2. The particulars being that on 20/01/2014 in Miangeni Village, Kathekani Village, Kathekani Sub Location, Mtito Andei Location, Kibwezi District, Makueni County, jointly with another not before court murdered Ian Mumo Mutiso.
3. The accused pleaded not guilty and matter proceeded into trial.
4. The prosecution called 10 witnesses and court was called upon to rule whether the accused has a case to answer.
5. Both defence and the prosecution did not submit their submissions but relied on the evidence on record.
6. PW1 wife of the accused narrated how the accused assaulted her and the deceased. Accused later went with the deceased and a rope away from the home. He (deceased) was later found strangled with the same rope accused and deceased left with.
7. The matter was reported to the police and they came and collected the body after photographing scene and the body.
8. The P3 form showing injuries to PW1 inflicted by the accused was identified by the PW1.
9. PW2 a neighbor to the accused saw accused, child tied by a lessa going away. He later saw him without a child.
10. He later learnt that the child was dead. He went to the scene and saw dead child. He later recorded statement.
11. PW3 father to PW1 narrated how he got a call from DW1 a day later who narrated how the accused assaulted her all night long.
12. He travelled later and found that PW1 child had been murdered.
13. PW4 narrated how chief was notified of that incident and told them they go to report to police. They went to the scene and saw the deceased body.
14. The police collected it after photographing the same. PW5 was grandmother to PW1. She went to report to the chief after she got a call from PW1. She was told to go and see the body of the killed child. She saw the deceased body.
15. PW6 was the retired chief of the area. He said he got a call from PW5. He got report of PW1 assault by accused. He was told accused and child ran away to the bushes. They went to the scene with the police and saw deceased body which was collected after photographs.

16. PW7 police officer went to scene after distress call. He saw the body and the rope photographs were taken and body collected.
17. PW8 was the Doctor who produced the postmortem confirming the cause of death via strangulation. He also produced P3 form for PW1 to show her injuries.
18. PW9 was police officer scene of crime officer who took the photographs of the scene and the body of the deceased. He produced same as exhibits.
19. PW10 was the investigation officer who investigated the case and decided to charge the accused with murder.
20. From the evidence on record the same to be purely circumstantial as nobody actually witnessed the actual killing.
21. However, the narration by PW1 and PW2 point to the accused as the only person who had opportunity and reason to kill the deceased.
22. He was seen going away with child and a rope and the child was found later about 300 metres away strangled. The cause of death was strangulation vide P3 form.
23. The accused has to explain what he did with the child after he left with it and went away.
24. He had prior to the disappearance with the child assaulted PW1 and the child seriously.
25. The evidence on record is thus enough to warrant conviction if accused was to remain silent on his defense.
26. The court thus orders that the accused has a case to answer and thus put on his defense.

SIGNED, DATED AND DELIVERED THIS 17TH DAY OF DECEMBER 2018, IN OPEN COURT.

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HON. C. KARIUKI

JUDGE