



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KITALE

CRIMINAL CASE NO. 15 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

1. JOHN HAMISI BARASA.....1ST ACCUSED

2. HASSAN RAMADHAN HASSAN.....2ND ACCUSED

RULING

The accused persons were charged with the offence of **Murder contrary to Section 203 and read with Section 204 of the Penal Code**. The particulars of the charge were that on the **6th day of May 2013 at Tiwan within Trans Nzoia County jointly with another one murdered Sammy Mugenje**.

The prosecution called 3 witnesses to establish its case.

PW1 Peter Barasa a colleague to the deceased told the court that on the material night at around 10 pm he was escorting the deceased back to his house. They were attacked by two people. Each was attacked separately but unfortunately the deceased succumbed to his injuries. He managed to escape though.

PW2 Kibet Charles Kirui was a brother to the deceased. He only came after he heard about the incident from his mother. He equally identified the body during post mortem.

PW3 Dr Edward Odhiambo did the postmortem on the deceased body and concluded that the cause of death was severe external bleeding.

After several adjournments the prosecution closed its case. The question now is whether there is sufficient evidence to put the accused persons on their defence. Both the learned state counsel and the advocate for the accused have filed written submissions.

Its apparent that the only credible evidence presented was by PW1 who was with the deceased. He alleged that he was able to identify the accused person using light from their mobile phones. He said

“ It was about 10.30 pm. It was dark but we were using light from our mobile phones when the two people appeared and questioned us as to why we were reflecting our torch flashed on them. I saw and identified one of these people. He was the first accused in the dock (identified). He was wearing a dark jacket.”

Clearly the intensity of the light from the torch was not established.

The Court in *Oluoch V Republic 1983 KLR 149* stated that the evidence of a single witness ought to be taken with greatest care. The court stated that

“A dock identification of an accused person by a witness where there had been no identification parade conducted earlier and at which the witness is present is almost worthless.”

This clearly was a case where a parade identification perhaps ought to have been done.

In *Karani Vs Republic 1983 KLR 290*, the Court of Appeal stated that;

“ A fact may be proved by the testimony of a single witness but this rule does not less the need for testing with the greatest care the evidence of a single witness in respect of identification especially when it is known that the conditions favouring a correct identification were difficult. In such circumstances there is need for other evidence.”

In light of the above observations its clear that it was only PW1 who testified concerning the identity of the accused persons. Infact he exonerated the 2nd accused as he was unable to identify him. More importantly the condition were not favourable . The light from the mobile phone cannot be argued to be strong so as to ensure that an assailant is clearly identified.

Perhaps the prosecution ought to have called the investigating officer to shed light on the above and more particularly the 2nd accused and how they were arrested.

In the premises and for the above reasons the prosecution has not established any prima facie case against the two accused persons. They are therefore set free under the provisions of Section 210 of the Criminal Procedure Code unless lawfully held.

Delivered this 7th day of February 2017.

H.K. CHEMITEI

JUDGE

In the presence;

Kakoi for state

Ingosi for the accused

Accused – present

Court Assistant – Kirong