



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 47 OF 2011

REPUBLIC.....STATE

VERSUS

DAVID KIMONDA CHESANG'.....ACCUSED

RULING

The accused **DAVID KIMONDA CHESANG'** faces a charge of **MURDER CONTRARY TO SECTION 203 as read with SECTION 204 OF THE PENAL CODE**. The particulars of the charge were given as follows:-

“On the 3rd day of June, 2011 at Rumuruti Township in Laikipia West District within Rift Valley Province murdered JULIUS MWANGI”

The accused pleaded ‘**Not Guilty**’ to the charge and his trial commenced before **Hon. Lady Justice Hellen Omondi** on 9/10/13.

The prosecution called a total of four (4) witnesses in support of their case.

The prosecution case as narrated by **PW2 FRANCIS KIPRONO ARAP CHEPKWONY** who is the proprietor of Furaha Bar and Lodgings in Rumuruti is as follows.

On 2/6/2011 he was at his bar working. At about midnight he heard a loud bang and the front door was pushed open. He heard the sound of footsteps running and a man calling out for help. **PW2** rushed to check what the problem was. He found the deceased **JAMES MWANGI** trying to shield himself from the accused. The accused had a knife and **PW2** saw the accused take aim and stab the deceased in the chest. The deceased fell to the ground. The accused raised his hand in order to stab the deceased again. **PW2** stepped forward and held the accused’s hand.

Due to the commotion occupants in the other rooms came out. These included **PW1 JAMES NDIANGUI MUIGA** and **PW3 STEPHEN KIMOMO KIPRONO** both who testify that they saw the accused holding a blood stained knife poised over the deceased who was lying on the ground in a pool of blood. Police were called to the scene. The accused was then arrested and charged.

The prosecution having closed their case this court must now make a determination as to whether the prosecution have established a prima facie case.

In any murder trial aside from the fact of death the prosecution is required to prove the cause of death of the deceased. Most usually this is by way of the evidence of the doctor who conducted the autopsy on the body of the deceased and by way of production of a post-mortem report. In this case no doctor came to testify and no post-mortem report was produced. The court is being invited to presume that the deceased met his death as a result of having been stabbed.

In the case of **CHENGO NICKSON KALAMA Vs REPUBLIC [2015]eKLR** the Court of Appeal held that

“..... save in very exceptional cases..... it is absolutely necessary that death and the cause thereof be proved beyond reasonable doubt and that can only be achieved by production of medical evidence and in particular, a post mortem examination report of the deceased.....”

That is precisely the situation that pertains in this case. No proof has been offered to establish what caused the death of the deceased. The evidence that the deceased was stabbed cannot lead to the assumption that he died from stab wounds. The link between the stabbing and the

mortality of the deceased must be proved beyond reasonable doubt. That has not been done in this case.

I find that having failed to prove a crucial ingredient of the charge of murder notwithstanding the strength of other available evidence no prima facie case has been shown. I enter a verdict of '**Not Guilty**' and I acquit the accused of this charge of murder. The accused is to be set at liberty forthwith unless he is otherwise lawfully held.

Dated and Delivered in Nakuru this 3rd day of February, 2017

Mr. Kemboi holding brief for Mr. Kipkemei for Accused

Maureen A. Odero

Judge