



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL DIVISION
CRIMINAL (MURDER) CASE NO. 21 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

JOHN MAKATIANI.....ACCUSED

R U L I N G

Introduction

1. The case against the accused person herein John Makatiani is one of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars being that the said John Makatiani, on the 3rd June, 2010 at Shidodo Sub-location, Ilala Village in Kakamega East District of Kakamega County within Western Province, murdered Kizito Ashiundu.

2. On the date of plea on 27.06.2012, the accused person denied the charge before Lady Justice Beatrice Thurania Jaden. The case has been ongoing since then and the prosecution called 6 witnesses who testified against the accused person. The witnesses were Beatrice Sungu Andole PW1, Dr. Dickson Mchana, PW2 Number 232325 APC Paul Kipsang, PW3, Elizabeth Imbwaka, PW4 Ernest Wichenje Alex, PW5 and Michael Lwapala Natieminya PW6.

The Prosecution Case

3. From the evidence of the 6 prosecution witnesses, the prosecution's case is that on the material day, the deceased left home at about 7.00am for work at Mukumu hospital. He did not return home that day and on the morning of 03.06.2012, his wife Beatrice Sungu Andole PW1, started looking for him when she was informed that the deceased was at the home of the accused person herein seeking treatment. On reaching the accused person's home, PW1 found the deceased lying on a sofa set inside the accused person's house. The deceased was not breathing. The accused person was not in the house. The police were called and they took the body of the deceased to the mortuary at the Kakamega County General Hospital.

4. When the post mortem examination was conducted by Dr. Mchana, PW2 upon the body of the deceased, on 04.06.2012, it was noted that the body had defensive injuries on the forearms, shoulders and the back. Dr. Mchana also testified that there was evidence of medical intervention before death. Internally, the body had blood clots under the skin on the left chest but no fractures were noted. There was bleeding in the left covering to the membrane involving the fore chamber. There was also bleeding on the right side third chamber and an accompanying blood clot on the right side of the neck below the skin. In Dr. Mchana's opinion, the cause of death was bleeding into the brain secondary to blunt force

trauma following assault. The post mortem report was produced in evidence as PExhibit 1.

5. According to the testimony of Elizabeth Imbwaka PW4 the deceased spent the night at the home of the accused person before he (deceased) was found dead the following day lying on a sofa set inside the accused person's house. According to PW4, it is the accused person himself who gave her the information that the deceased had spent the night at his (accused's home) and was now very sick. As PW4 and the accused walked towards the accused person's home, the accused ran away and disappeared until 7.06.2012 when he was apprehended by members of the public and handed over to number 232325 APC Paul Kipsang of Khayega AP Camp.

The Submissions

6. At the close of the prosecution case, both M/SA Akinyi advocate for the accused person and Mr. Oroni, Senior Prosecution counsel asked the court to give a ruling as to whether or not the accused person has a case to answer based on the evidence on record.

Analyses and Findings

7. I have now carefully considered the evidence tendered by the prosecution in this case. At this point of the case, the prosecution is not under a duty to prove the case beyond any reasonable doubt. All that the prosecution is required to do is to demonstrate that the evidence on record is such that if the court properly directs its mind to the same, it could convict the accused person if no explanation is forthcoming from the accused person. In carrying out this task, the court need not decide whether the evidence is weighty enough to sustain a conviction. For the above propositions, I am guided by the case of **Bhatt –vs – Rex [1957] EA 336.**

8. Applying the above principles to the evidence on record, I am satisfied that the prosecution has established a prima facie case requiring the accused person to be put on his defence in answer to the murder of Kizito Ashiundu. In doing so, the accused person may give sworn evidence or an unsworn statement. If he elects to give sworn evidence, he may be asked questions both by the court and the prosecution. In both instances, the accused person is at liberty to call witnesses. The accused person is also at liberty to remain silent and let the court decide the case on the evidence that is before it.

9. I now call upon the accused person to indicate either directly or through his advocate how he intends to conduct his defence

Orders accordingly.

Ruling delivered, dated and signed in open court at Kakamega this 1st day of February, 2017

RUTH N. SITATI

JUDGE

In the presence of:-

.....Mr. Jamsumba.....for the state

.....Mr. Ombaye for Akinyi(present).....for the Accused

.....Mr. Polycap..... Court Assistants.