

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NUMBER 89 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

DANIEL NJUGUNA MWICIGI.....ACCUSED

RULING

Daniel Njuguna Mwicigi, the accused, is accused of killing Joseph Njoroge Kanini, the deceased, contrary to section 203 as read with section 204 of the Penal Code on 21st September 2014 at Matimbei Area in Lari District within Kiambu County. The accused pleaded not guilty to the charge.

The court was told by the witnesses for the prosecution that on 20th September 2014, at around 11.00pm the deceased and the accused fought. The fight seems to have resulted from the accused person's attempt to have the deceased put out a fire he had lit at the compound of Stephen Gathuru Wathika, PW5. The deceased is said to have bitten the accused's finger and the accused is said to have retaliated by beating the deceased using pieces of firewood. The deceased sustained serious injuries on the head, both arms and legs and ribs. Dr. Charles Muturi, PW3, testified that the deceased died as a result of severe head injury due to blunt force trauma.

The clothes, shoes and socks worn by the accused and which had been stained with blood were examined together with the pieces of wood found at the scene. It was confirmed by the Government Analyst Ms Elizabeth Waithera, PW11, that the blood stains on the socks and jacket said to belong to the accused and the piece of wood belonged to the deceased.

At this stage of the trial the court is required to determine whether the prosecution has established a prima facie case to require the accused to be placed at his defence. I have examined the entire evidence and submissions by both counsels on opposing sides. The evidence of Anne Muthoni Wathika, PW2, and Samuel Wathika Wanjiku, PW4, place the accused at the scene of murder. In addition, the evidence from the Government Analyst confirmed that accused's socks and jacket had deceased blood. Having considered the prosecution evidence in its entirety, I am satisfied that the prosecution has established a case on which this court, basing its reasoning on the available evidence and the law, could convict even if the accused were to choose to remain silent and not offer his defence. I will and do hereby make a finding that the accused has a case to answer and proceed, in accordance with the provisions of Section 306 (2) of the Criminal Procedure Code order that the accused shall proceed to give his defence in this matter. He is informed of his rights to tell the court the manner in which he will be giving that defence, whether by taking oath or not taking the oath and whether he will be calling any witnesses to his defence. It is so ordered.

Dated, signed and delivered in open court this 13th day of March 2017.

S. N. Mutuku

Judge