

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

HCCRC NO. 12 OF 2015

REPUBLICPROSECUTOR

VERSUS

MIKE TYSON OKETCH ACCUSED

RULING

The accused was charged with the murder of Washington Okoth on 26th December 2013. The prosecution called a total of seven witnesses including Dr. Dickson Muchala (PW7) who confirmed that the deceased died as a result of a severe injury to the head due to blunt force trauma.

On 14th February 2017 this Court heard the submissions of Miss Odhong, the Advocate for the accused and Mr. Muia, Prosecution Counsel and this Court is at this stage required to determine whether a prima facie case was established against the accused person sufficiently to warrant him to be put on his defence; a prima facie case being one where a reasonable tribunal properly directing its mind would convict even were the accused to remain silent when put on his defence.

Applying that test to this case it is my finding that the accused has no case to answer. The evidence against the accused person is purely hearsay. Even PW1 and PW3 who are alleged to have witnessed the murder denied that they did. PW1 (Boaz Onyango Arika) a cousin of the deceased, in examination in-chief testified that he arrived at the scene after the incident. He found the deceased lying close to the house with the accused standing nearby with a club.

In cross-examination he vehemently disputed that he saw the accused beating the deceased. The other alleged eye witness was PW3 (Jared Omondi). This witness stated that the only role he played was to take the deceased to hospital at the request of PW1 and one Benson. According to him he was in his house sleeping when the incident is alleged to have occurred. The deceased's mother (PW2) and father (PW4) all heard about the incident. They did not even see the deceased at the scene as he had been taken to hospital. Whereas the Assistant Chief (PW5) alleges to have been told that the accused was among the young men who fought the deceased there is no evidence from those who allegedly told him so to confirm it. Even PW3 who he alleges was an eye witness denied it and stated he was asleep in his house only to be awakened to take the victim to hospital. The closest the prosecution came to connecting the accused to this crime was PW1(Boaz) testimony that he saw the accused with a club. However that club was never exhibited and even if it had been exhibited there would have been need to confirm it was the one that was used to inflict the injury on the deceased. Forensic evidence would also have been required to confirm that indeed the accused had handled that club. In the absence of such evidence it would be futile to put the accused on his defence. Accordingly I find that there is no evidence that the accused committed the offence. I find him not guilty of murder and acquit him under Section 306(1) of the Criminal Procedure Code. He should be released forthwith unless otherwise lawfully held. It is so ordered.

Signed, dated and delivered at Kisumu this 9th day of March 2017

E. N. MAINA

JUDGE

In the presence of:-

Miss Kimani for State

Accused person

Court Assistant – Serah Sidera