

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NUMBER 42 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

FESTUS MUENDO PHILIP.....ACCUSED

RULING

Festus Muendo Philip, the accused, is charged with murder contrary to section 203 as read with section 204 of the Penal Code. Particulars of this offence are that on the night of 22nd and 23rd May 2014 at Tassia Estate in Embakasi Division within Nairobi County he murdered Joseph Mulili.

The prosecution has called eight witnesses in support of their case. The evidence adduced can be summarized as follows:

The deceased Joseph Mulili lived in house number 67 in Tassia Embakasi. The houses were 72 houses all single roomed and built of iron sheets. In house number 67 were three tenants, the accused, the deceased and another unidentified man. The deceased was the one paying rent according to Eva Wambui Ribiro, PW1. On 22nd May 2014 the deceased called Eva around 10.00pm and told her to go the following day to pick money from the deceased for rent. Eva worked as an agent for Properties & Business Outlook. One of her duties was to collect rent on behalf of her employer.

On 23rd May 2014 Eva woke up at 5.00am and went to pick the money. She knocked at house number 67 but there was no answer. She knocked at the window. The accused opened the door from inside. Eva informed the accused that she had come for rent and asked where the deceased was. The accused told her that the deceased was not present. The accused then went out of the house and shut the door. The door was not secured properly and it opened after the wind pushed it. Eva saw someone inside the house lying on the floor covered with a blanket. Eva called the person but there was no answer. This attracted neighbours who noticed bloodstains near where the person lay. Eva informed her employer and left the scene.

Police were informed and investigations commenced. It was later established that the person lying on the floor covered with a blanket was the deceased and he was dead. His head had been smashed with what seemed to have been a heavy object. Two blocks of blood-stained stones were found near the body. The scene was photographed and the body removed and taken to the City Mortuary. The examination of the body was done by Dr. Njeru, PW6, on 29th May 2014. It revealed that a deformed head with skull fractures, lacerations on the right and left eyelids, extensive bleeding in the skin covering the head and multiple skull fracture lines with bleeding in the substance of the brain. The brain material was bruised. The doctor formed the opinion that the cause of death was head injury due to blunt force trauma.

I have examined this evidence, specifically that of Eva Wambui, PW1. Wambui knew the accused. She knew he was one of the three tenants who lived in house number 67. He had known the three tenants, the accused, the deceased and another man for three months and knew they lived in the house whose rent was paid for by the deceased. Eva identified the accused as the person who opened the door after she knocked on the window on 23rd May 2014 when she went to collect rent.

In my view this evidence on record establishes a case on which a this court, properly directing its mind to the law and the evidence, could convict if no explanation is offered by the defence (see **Ramanlal**

Trambaklal Bhatt v. Republic (1957) E.A. 332). Having satisfied myself that the evidence establishes a prima facie case against the accused person, I proceed to find that the accused has a case to answer. He shall be placed on his defence. He is hereby informed of his rights under Section 306 (2) of the Criminal Procedure Code to notify this court the manner in which he wishes to defend himself, whether by taking oath and not and whether he will be calling any witnesses to his defence. Orders shall issue accordingly.

Dated, signed and delivered in open court this 1st day of March 2017.

S. N. Mutuku

Judge