



REPUBLIC OF KENYA
IN THE HIGH COURT OFF KENYA
AT NAKURU
CRIMINAL CASE NO. 31 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

PETER MWANGI KIRANGU.....1ST ACCUSED

GEORGE GICHKI WANJOHI.....2ND ACCUSED

ALBAS MAINA KAHIONYA.....3RD ACCUSED

RULING

The three accused persons namely **PETER MWANGI KIRANGU** (hereinafter referred to as the 1st accused) **GEORGE GICHUKI WANJOHI** hereinafter referred to as the 2nd accused) and **ALBAS MAINA KAHIONYA** (hereinafter referred to as the 3rd accused) are jointly charged with the offence of **MURDER CONTRARY TO SECTION 203 as read with SECTION 204 OF THE PENAL CODE.** The particulars of the charge were that

“On the night of 18th and 19th of January, 2011 at Manguo Estate in Nyahururu Township within Laikipia County jointly murdered TIMOTHY KAGIRI MATHENGE.

All the three accused persons pleaded ‘**Not Guilty**’ to the charges. The prosecution led by the accused state counsel called a total of thirteen (13) witnesses in support of their case.

PW 1 SIMON MAINA GATERO told the court that he is a security guard employed by Apex Securities. At the material time **PW1** was on night duty at the Ministry of Housing in Nyahururu. On 19/11/2011 **PW1** left work at 6.00am and riding his bicycle proceeded home.

At about 6.30 am he got to the place called Manguo. He noticed a bicycle lying by the side of the road. **PW1** recognised that bicycle as one belonging to the deceased ‘**Kagiri**’ who was an employee of the Ministry so he stopped to check.

Upon moving closer **PW1** noticed the deceased lying in a ditch. The deceased was still alive and was breathing however he was not talking but had vomited on his face. **PW1** called a colleague ‘**JOHN NDEGWA GATHUA**’ (**PW2**) who also came to the scene.

The two men took the deceased’s bicycle to a nearby petrol station for safekeeping. They then called two colleagues of the deceased **MOSES CHIRCHIR KIPTUI** **PW3** and **MARTIN MURAGE WANJOHI**

PW4 . The two hired a vehicle and took the deceased to hospital for treatment. They also alerted relative of the deceased. The deceased was admitted in hospital for about nine (9) days after which he passed away while undergoing treatment.

The incident was reported to police who commenced investigations into the matter. The three accuseds were later arrested and charged with the offence of murder.

At the close of the prosecution case this court wish now also analyze the evidence on record with a view to determining whether a *prima facie* case has been established to warrant calling upon the 3 accused persons to defend themselves. The definition of what constitutes a *prima facie* case was given in the case of **RAMANLAL T. BHATT Vs REPUBLIC [1957] E.A. 332** where it was stated as follows: -

“...It may not be easy to define what is meant by a “prima facie case” but at least it must mean one on which a reasonable tribunal properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence”.

In this case the fact of death of the deceased is not in any doubt. **PW8 BEATRICE WAMBUI MATTHENGE** told the court that the deceased ‘**Timothy Kagiri Mathenge**’ was her brother. Secondly **PW6 JOSEPH NDERI MATHENGE** told the court that the deceased was his younger brother. Both **PW6** and **PW8** told the court that upon receiving news of the incident from the work colleagues of the deceased, they went and found their brother admitted in hospital in Nakuru. The family latter transferred him to Avenue Nursing Home in Nairobi for specialized treatment. On 27/1/2011 the deceased unfortunately passed away.

Evidence on the cause of death is less certain **PW11 DR. TITUS NGULUNGU** produced as an exhibit the post mortem report which was filled and signed by his senior **DR. JANE WASIKE** on 18/3/2011. The autopsy was conducted at Avenue Hospital Mortuary. The doctor noted no fractures on the body but the lungs showed signs of abcess. There was evidence of medical intervention from the treatment accorded to the deceased during the nine (9) days he had been admitted in hospital. The doctor further noted collusion of occipital lobes and a hematoma on the left temporal lobe. The cause of death was opined to be ‘**raised intra-cranial pressure secondly to brain haemorrhage**’ However the doctor was unable to establish the cause of the injuries noted *ie* were the same caused by a blunt object, a sharp object or from a fall.

Thus the cause of death remains questionable. It is not clear whether death arose due to homicide or due to accident in which no person had a hand. It must be remembered that the deceased was found lying in a ditch with his bicycle fallen beside him. Could he have fallen due to an accident and landed inside the ditch causing the injuries in which ultimately led to his death. This possibility has not been excluded by the investigators. There was no witness who said how the deceased sustained his fatal injuries. The deceased himself was unable to speak and thus did not give any account of what happened to him.

Aside from these uncertainties regarding the cause of death, there is no evidence from any witness that any of the 3 accused persons assaulted and injured the deceased. None of the accused persons was seen near the scene where the deceased was found. There is no iota of evidence linking the 3 accuseds to the injuries which the deceased sustained.

PW12 CORPORAL BENEDICT MWANZA was the investigating officer. He told the court that the 3 accused were linked to the death of the deceased through phone records retrieved from the deceased mobile phone. **PW12** produced as an exhibit a receipt **P.exh 2** for a mobile phone serial No. 358846031400272. The phone was make vodaphone and the purchase price was Kshs 1,000/=. This phone was not produced in court as an exhibit. Thus the court was not able to ascertain that a mobile phone bearing the serial number listed on the receipts was ever recovered on any of the accused persons.

It was alleged that the 2nd accused sold the deceased’s mobile phone to the 3rd deceased who later destroyed the phone as it could not work well. No evidence has been tendered to show that the 3rd accused ever destroyed such a phone.

PW12 , also stated that a simcard belonged to 1st accused No. 0725181468 was used in the deceased mobile phone. The official records for the line were never produced in court thus there is no evidence that the 1st accused was the registered subscriber of that particular number.

PW13 CORPORAL ISSAC RUTO an officer attached to Safaricom Limited **PW13** made no mention of the 1st accused or the sim card alleged to have been his. **PW13** only spoke of a number 0701762741 which was used in the mobile phone bearing serial number in question.

According to **PW13** that phone line belonged to one **‘Ms Pauline Munyasi’**. None of the accused person is named **‘Pauline Munyasi’**. No connection is shown to exist between duly of the accuseds and the said **‘Pauline Munyasi’**. In effect the testimony of **PW13 excludes** any of the 3 accused persons from the use of this handset after the death of the deceased. There is therefore no evidence to connect any of the 3 accuseds to the death of the deceased or to his mobile phone after his death.

The evidence on record does not even merit being classified as evidence of suspicious. There were absolutely no basis for the arraignment of the 3 accuseds persons in court. There is nothing to connect any of them to the death of the deceased. Consequently I enter a verdict of **‘Not Guilty’** and I acquit each of the 3 accuseds of the charge of murder. Each accused is to be set at liberty forthwith unless otherwise lawfully held.

Dated and Delivered in Nakuru this 7th day of April 2017.

Mr Maragua holding brief Mr Kanyi

Mr Chigit for State

Maureen A. Odero

Judge