



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL CASE NO. 52 OF 2014**

REPUBLIC.....PROSECUTOR

VERSUS

SALOME WANJIKU KUNGU.....1<sup>ST</sup> ACCUSED

TOM CHEGE MBITHI alias RASTA.....2<sup>ND</sup> ACCUSED

**RULING**

Salome Wanjiku Kungu, the 1<sup>st</sup> accused, and Tom Chege Mbithi alias Rasta, the 2<sup>nd</sup> accused, are jointly charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the night of 22<sup>nd</sup> and 23<sup>rd</sup> June 2014 at Wabuga Village in Kikuyu Sub-County within Kiambu County jointly with another not before the court murdered George Mbithi Mwaura. The charge was read to the accused persons on 19<sup>th</sup> November 2014. They pleaded not guilty to the charge. They are represented by Mr. Mbiyu, advocate.

The prosecution has presented evidence in support of the charge. A total of ten (10) witnesses testified. From their evidence, George Mbithi Mwaura, the “deceased” was last seen alive on 22<sup>nd</sup> June 2014. On that day, the deceased walked home in the company of his cousin and neighbour, John Njoroge (PW1) at about 7.30pm. The deceased was wearing blue trousers and jacket. The deceased entered his compound and left PW1 to proceed to his home. The following morning at about 7.00am PW1 heard people screaming. PW1 learned that the reason for the screaming was that the deceased had been found lying dead beside the road near his (deceased’s) home. PW1 went to the scene and confirmed. He saw the body of the deceased. He noted that the deceased was wearing a track suit. These clothes were different from the ones he had worn the previous evening before PW1 parted ways with him.

The matter was reported to the police. Investigations led to the recovery of blood-stains clothes including a bed cover from the home of the deceased. A claw hammer and two blood stained gunny bags were recovered from Ndongoyo Primary School located at about 400 meters from the scene where the body was found. Examination of the stains of blood found on the bedcover and the claw hammer and DNA profiles generated from these two items matched the blood of the deceased. The police arrested the 1<sup>st</sup> accused, the wife of the deceased and 2<sup>nd</sup> accused, son of the deceased. They were charged with this offence.

The evidence from the pathologist, Dr. Oduor Johansen confirmed death of the deceased as a result of head injuries due to blunt force trauma.

After the prosecution closed its case, counsels had indicated that they would make submissions before the court determined whether the accused persons have a case to answer or not. However, on 31<sup>st</sup> May 2017 when the case was placed for submissions, this court was informed that Mbiyu had decided to leave the matter to the court to determine whether the prosecution has made out a prima facie case against the two accused persons basing it on the evidence on record. The prosecution confirmed that they did not wish to submit as well.

I have examined and analysed all the evidence presented by the prosecution. I am persuaded that the evidence which is based on circumstantial evidence makes out a case against the accused persons on

which this court, properly directing its mind to the law and the evidence, could convict if no explanation is offered by the defence. I find that there exists strong circumstantial evidence against the two accused persons and therefore in compliance with Section 306 (2) of the Criminal Procedure Code find that each of the accused persons has a case to answer and shall therefore be placed on her/his defense. Their rights under the above section have been explained to them that they have a right to defense and that they are obligated to inform this court how they wish to defend themselves, either by taking an oath or without taking an oath and whether they wish to call any witnesses to their defense.

Orders shall issue accordingly.

**Dated, signed and delivered this 14<sup>th</sup> day of June 2017.**

**S. N. MUTUKU**

**JUDGE**