



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL CASE NO. 43 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

CHARLES KAIRU KARANJA.....1ST ACCUSED

EDWARD KAMAU KAIRU.....2ND ACCUSED

JAMES KINYUA KAIRU.....3RD ACCUSED

RULING

The three accused persons namely **CHARLES KAIRU KARANJA** (hereinafter referred to as the 1st accused), **EDWARD KAMAU KAIRU** (hereinafter referred to as 2nd accused), **JAMES KINYUA KAIRU** (hereinafter referred as 3rd accused) are all 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 22nd day of April, 2013 at Kagoto Area Bahati in Nakuru North District within Nakuru County, jointly with others not before court murdered SAMUEL KARIUKI MACHARIA”

All three accused pleaded ‘Not Guilty’ to the charge and their trial commenced before **Hon. Lady Justice Helen Omondi** on 4/3/2014. The Honourable Judge heard the evidence of the first three (3) prosecution witnesses. Following her transfer to Bungoma Law Courts I took over the case and heard the evidence of a further four (4) prosecution witnesses. A total of seven (7) witnesses testified in the case.

Briefly the facts of the case are as follows. The first accused is the father of the 2nd and 3rd accused persons. **PW3 MARY WANGECHI** was a grandmother to the deceased whilst **PW4 JOSEPH MWANGI** was the deceased’s uncle. They told the court that on 22/2/2013 the deceased had been involved in a fight with one ‘**Kafuro**’ a son to the 1st accused.

Thereafter the 1st accused visited the home of **PW3** severally demanding that she produce her grandson. **PW3** eventually reported this harassment to the local chief who was **EDWARD NJIRAINI MUTHEE PW1**. **PW1** acknowledged having received the report from **PW3** and he acted by summoning both **PW3** and the 1st accused to his office for a discussion. Although **PW3** attended as required the 1st accused ignored the summons and failed to attend the meeting with the chief.

Both **PW3** and **PW4** went on to testify that on 23/2/2013 a mob of people led by the 1st accused, went to the home of **PW3** and forced the deceased out of his house. The mob who were armed with crude weapons led the deceased away and he was never seen again. **PW4** went to the Bahati police station to enquire about the whereabouts of the deceased and he was informed that a man who had been subjected to mob violence had been rushed to PGH-Nakuru. **PW4** went to the said hospital and found the badly bruised body of the deceased in the mortuary.

The matter was reported to the police who launched investigations. Eventually the three accused's were arrested and charged with the offence of murder.

The prosecution having closed their case this court must now analyze the evidence on record with a view to determining whether a prima facie case has been established to warrant placing the three accused persons onto their defence. In the case of **RAMANLAL T. BHATT Vs REPUBLIC [1957] E.ALR**, a prima facie case was defined in the following terms

“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 the present case the fact as well as the cause of death of the deceased have been readily proved. Both **PW3** and **PW4** who were relatives of the deceased confirm the fact of his death. **PW2 FRANCIS MAINA NGUGI** also an uncle to the deceased told the court that he went to the mortuary and identified the body of the deceased to the doctor and later witnessed the autopsy. All these witnesses who knew the deceased well identify him as **‘Samuel Kariuki Macharia’**.

Evidence regarding the cause of death was tendered by **PW6 DR. TITUS NGULUNGU** a Consultant pathologist based at the PGH-Nakuru, who conducted the autopsy on the body of the deceased. **PW6** told the court that he noted multiple, bruises, lacerations and tears on the head and body of the deceased. The opinion of the pathologist was that the cause of death was **‘severe head injury attended by scalp lacerations, and brain contusions with haemorrhage due to multiple blunt force trauma to the head’**. **PW6** filled and signed the post-mortem report which he produced in court as an exhibit **P. exb 3**. This was expert medical opinion evidence which was not challenged or controverted by the defence. I therefore find as a fact that the deceased died due to a vicious assault on his person.

Having proved the fact and cause of death, the prosecution is obliged to tender evidence sufficient to prove the involvement of the three accuseds in this brutal assault on the deceased.

Regarding the 2nd and 3rd accused persons the evidence against them is that they were both sons of the 1st accused who is said to have been searching for the deceased at his home. This is not sufficient to implicate the two in the murder of the deceased.

PW3 and **PW4** both told the court that on the night of 23/4/2013 at about 11.00pm a group of over 20 people armed with crude weapons came and pulled the deceased out of his house and took him away. The next time the deceased was seen he was lying dead in the mortuary. I have no doubt that it was this mob who fatally assaulted the deceased. The question therefore is whether the 3 accused's persons were involved in this mob injustices.

There is no witness who saw any of the three accused's attack or assault the deceased in any manner whatsoever. **PW3** and **PW4** both state that they were both present in the homestead when the mob arrived and forced the deceased out of his house. In her evidence in chief **PW3** stated that she recognized the **‘sons’** of the 1st accused as well as the 1st accused in the mob. However under cross-examination when questioned about the light available, **PW3** states as follows

“..... It was a dark night there was no moon-light and I did not recognize anyone”

Therefore **PW3** contradicts her own testimony. The mob is said to have come to her home at 11.00pm. If

there was no light source available and no moonlight how then did she see and recognize the 3 accused persons. It is clear that **PW3** was not being honest to the court.

On his part **PW4** says that he only saw the 1st accused on the night in question. Under cross-examination **PW4** clearly states

“I know accused No. 2 and accused No. 3 as neighbours. They were not there the day the deceased was pulled out of his house. I do not know what connection accused No. 2 and accused No. 3 have to the death of the deceased”.

Earlier **PW4** had said

“They (the mob) came at 11.00pm. It was dark but there was moonlight”

PW4 has contradicted the testimony of **PW3** in two aspects. Firstly contrary to the assertion by **PW3** that the 2nd and 3rd accused were part of the mob who pulled the deceased out of his house **PW4** insists that they were not present. Secondly whilst **PW3** says it was a dark night and there was no moonlight, **PW4** claims the moon was out on the night in question. These contradictions raise grave doubts about the veracity of these two prosecution witnesses as they could not both have been telling the truth. In addition I was able to observe the demeanour of **PW4** as he gave evidence before me. He was hesitant and uncertain and did not seem too sure of what he had seen. The confusion on the part of this witness led me to highly suspect that he had been coached on what to tell the court.

On the whole there is no reliable and believable evidence to identify any of the 3 accuseds as amongst the mob who came and forced the deceased out of his house and led him to his death.

PW5 PC PAUL MUTINDA and **PW7 PC HENRY KASAU** were both officers who were on duty at Bahati police station on the night of 22/4/2013. They both testify that some boda boda riders came to the police station to bring the deceased whom they reported had been beaten up by a mob. The police saw the victim who had been badly injured, he could not walk or talk and advised that he be taken to hospital where he later died. **PW5** and **PW7** claim that the 1st, 2nd, and 3rd accuseds were amongst the reportees who brought the deceased to the police station. It is highly unlikely that the 3 accused would have beaten the deceased and then gone to report the incident to the police. This would not make sense. Neither **PW5** nor **PW7** were involved in the investigation of the case. They only booked the report and directed the reportees to take the victim to hospital.

If the 3 accuseds had been part of the mob who assaulted the deceased they would have absconded. They would not have gone to report the matter to the police and then taken the deceased to hospital.

No investigating officer has testified in this case. In my view this was a serious omission as it was only the investigating officer who could tie up the loose ends in this case. His failure to testify greatly weakened the prosecution case.

It is quite clear that the police opted to arrest and charge the three accuseds only because they were related to one **‘Isaac Njuguna aka Kafuro’**, who had allegedly been involved in a fight with the deceased the previous day. This alone is not enough. There is no direct and /or tangible evidence connecting any of the three accused persons to the fatal assault on the deceased. Should the 3 accuseds elect to keep silent in their defence the evidence on record would not sustain a conviction. I therefore find that the prosecution have failed to prove a *prima facie* case against any of the 3 accused persons. As such I enter a verdict of **‘Not Guilty’** and I acquit each accused of this charge of murder. Each accused person is to be set at liberty forthwith unless he is otherwise lawfully held.

Dated and delivered in Nakuru this 21st day of July, 2017

Mr. Kombo holding brief for Mr. Chigiti.

Maureen A. Otero

Judge