



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL CASE NO. 2 OF 2012 (MURDER)

REPUBLIC..... PROSECUTION

VERSUS

SIMON GITONGA NGARARU.....ACCUSED

RULING

1. The accused faces a charge of murder contrary to Section 203 and 204 of the Penal Code to which offence he pleaded not guilty.
2. The prosecution called a total of nine (9) witnesses who testified in support of the charge. At the close of the prosecution case, Mr. E.K. Njage for R. Njeru for the accused filed submissions of no case to answer to which the State responded to by filing their own.
3. The defence submitted that none of the prosecution witnesses witnessed the incident. It was argued that the deceased had just arrived home when he died, suggesting that he could have been injured elsewhere.
4. From PW2's evidence that the accused and the deceased related well with each other before the incident, it follows that motive was not established. There was contradiction of PW1's evidence with that of PW2 on the relationship between the deceased and the accused.
5. The evidence of identification was not water tight according to the defence. The defence urged the court to acquit the accused under Section 210 of the Criminal Procedure Code.
6. The State Counsel Ms. Nandwa submitted that the prosecution had established that the accused had a case to answer. Firstly, she stated that the deceased made a dying declaration and gave the name of the of the accused as the person who had attacked him as could be derived from PW2's evidence.
7. The dying declaration satisfies the requirements of Section 33 of the Evidence Act and complies with the principles laid down in th case of **CHOGE VS REPUBLIC [1985] KLR**. It was held that no corroboration is required for a dying declaration to support a conviction provided that the court ensures that caution is exercised in admitting such evidence.
8. The counsel urged the court to take into consideration the evidence of PW1 and PW2 which supports the charge and find that the accused has a case to answer.
9. The prosecution have the onus of proving at this stage that there is sufficient evidence to support the charge and that the evidence is credible.
- 10.The testimony of PW1 is that the accused had already assaulted her husband who is his brother before the deceased was clobbered. She saw him armed with something like a stick coming out of the deceased's house before she saw the deceased bleeding profusely from the head.
- 11.PW2 also saw the accused coming out of her house where she lived with the deceased. Prior to that she had heard the deceased screaming that "Gitonga" had killed him.
- 12.In addition to the direct evidence, there is circumstantial evidence which is admissible.
- 13.With that brief summary of the evidence, I do not intend to analyze the evidence in support of the charges to avoid pre-empting the defence of the accused. It is trite law that a detailed ruling is not

desirable in a case where the court find that the accused has a case to answer.
14.It was held in the case of **ANTONY NJUE NJERU VS REPUBLIC [2006] eKLR** that:-

“We wish to point out here that it is undesirable to give reasoned ruling at the close of the prosecution case, as the learned Judge did here unless the Court concerned is acquitting the accused person.”

15.in view of the above decision, I wish to hereby state that I have perused the evidence on record and I am satisfied that it is sufficient to support the charges.

16.I find that the accused has a case to answer and is hereby called upon to make his defence.

DELIVERED, DATED AND SIGNED AT EMBU THIS 11TH DAY OF APRIL, 2016.

F. MUCHEMI

JUDGE

In the presence of:-

Ms. Njeru for appellant

Mr. Onjoro for State

Appellant