



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYAMIRA

MURDER CASE NO. 69 OF 2015

REPUBLIC.....STATE

VERSUS

1. DAVID NGASURA NYAMONGO}1ST ACCUSED

2. THOMAS ARANGA NYANDIBI}.....2ND ACCUSED

RULING

This is a ruling of the court of the application of no-case to answer.

The case dates back to 2010. There were two cases, case **No. 90 of 2010 and 97 of 2010**. They were, however, consolidated into **Criminal Case 123 of 2011** in Kisii High Court.

Upon being transferred to Nyamira high Court, the case is now **No.69 of 2015**.

While in Kisii High Court, the case was handled by five judges, Judge **M.A Makhandia, Judge Lagat Korir, Judge RN. Sitati, Judge M. Mureithi and Judge C.B. Nagillah**.

The 1st accused, **David Ngasora Nyamongo** was charged on 18th October, 2010 with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence were that on 15th May 2010 at Obwari Location in Nyamira District within Nyanza Province with others not before court murdered **HELLEN NYAMONGO**.

The 2nd accused, **Thomas Aranga Nyandiba alias Anthony**, on 1st November 2010 with Murder contrary to **Section 203 as read with Section 204** of the **Penal Code**.

The particulars of the offence were on the 15th October 2010 at Obwari Location in Nyamira District within Nyanza province with others not before court murdered **HELLEN NYAMONGO**.

Both accused persons denied the charge.

The case was therefore slated for hearing.

On 25th day of February, 2014 the hearing commenced.

P.W.I-Charles Ombati Nyambega, the brother of the deceased

Hellen Kerubo Nyamongo, stated how his sister has domestic quarrels and fights, to the extent she lived apart, for (7) years at her parents' home. At one point after a fight the 1st accused person told his brother,

P. W.1 he did not want the deceased at his home. Death threats were constant. On 15/05/2010 the deceased went to the 1st accused's home to see the wife of his elder brother at Ekerenyo. After that her body was seen near Ekerenyo.

P.W.2 — Pacifica Gesare — the mother of the deceased, she related how two visitors, the 2nd accused visited the deceased in the shamba, asking her to pay them a visit when she did she never came back alive. The 1st accused did not want the deceased at the home. He issued threats constantly.

PW3-Rudia Nyamboga — a Manga Primary School girl saw the two visitors come home. Took them to her auntie in the shamba. They stayed in the shamba for (3) hours. Auntie gave her phone number to them and that of her brother Charles Ombati.

PW4-Jackline Moraa Nyamongo, the daughter of the deceased. She testified that the 1st accused issued death threats to **Charles Ombati, Pacifica Gesare and Hellen Kerubo Nyamongo** to her.

PW5-Duke Arasa Nyamongo is the son of the deceased together with the 1st accused. He testified that one day upon visiting his mother at the grandmother, their father, the 1st accused punished them so badly. He caned them and denied them money for food.

PWb- Dr. Harrison Onguti cause of death was cutting of neck region extending to nervous system resulting in haemorrhage and injury to spinal cord.

PW7-No. 65609 Sgt. Anderson Kimathi, the investigating officer in this case. Using the phone numbers of the deceased, the 1st accused and the 2nd accused the investigation pointed to the two accused as they lured the deceased through phone communication to her death.

PW8-Chief Inspector James Tali, No.217859, recorded the confession of the 2nd accused in which he admitted being hired to kill the deceased. He was paid Kshs.32,000 as the first payment. At the time he was arrested he had not completed the payment. Exhibit -5.

Findings

The evidence in totality points to the two accused persons as the people who conspired, the first accused hiring a hit man, the second accused, to eliminate the deceased. P.W.8 — Exhibit 5, 2nd accused's confession is a testimony to his involvement to the offence of murder.

The prosecution has made out a prima facie case against the accused person.

Accordingly, I find that the two accused persons, **David Ngasora Nyamongo** and **Thomas Aranga Nyandibi**, have a case to answer.

Therefore I put them to their defence.

How do they work to proceed with their defence?

Dated and delivered at Nyamira this 8th day of April, 2016.

C.B. NAGILLAH

JUDGE

In the presence of:

Nyagwencha for 1st accused person

Nyagwencha hold brief for Ondari for 2nd accused person Konga for the State

Mercy Court clerk