



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 40 OF 2013**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**SIMON WEKESA MUCHUMA.....1<sup>ST</sup> ACCUSED**

**BRIGHTON KINUTHIA alias COLLINS alias COLLO.....2<sup>ND</sup> ACCUSED**

**RULING**

Simon Wekesa Muchuma, 1<sup>st</sup> accused and Brighton Kinuthia alias Collins alias Collo, 2<sup>nd</sup> accused, are charged jointly with others not before the court with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the charge read that on the 20<sup>th</sup> day of February 2013 at Kayole Estate within Nairobi County jointly with others not before the court murdered Moses Misiko Maiko. Each accused denied the charge.

In support of its case the prosecution called seven witnesses: Olga Akinyi Okongo, PW1, (Akinyi) who was the wife of the deceased; Geoffrey Misita Maiko, PW2, (Geoffrey) brother to the deceased; SGT Gideon Ngethe, PW3 (SGT Ngethe); CPL Mwangi Kamau, PW4 (CPL Mwangi); Dr. Joseph Maundu, PW5 (Dr. Maundu); PC Joseph Kipsang, PW6 (PC Kipsang) and Dr. Peter Muriuki Ndegwa, PW7 (Dr. Ndegwa). The prosecution has closed its case and it is upon this court to analyze the evidence of the seven prosecution witnesses and determine whether it establishes a prima facie case against the accused persons to warrant their being placed on their defence.

According to Dr. Ndegwa, who examined the body of the deceased on 27<sup>th</sup> February 2013, the deceased died as a result of exsanguination due to multiple stab wounds. The body had penetrating stab wound on the left anterior chest wall, penetrating stab wound at the end of the ribcage, penetrating stab wound under the left armpit, penetrating stab wound on the left side below the ribcage, the lungs were perforated and blood had accumulated on both chest cavities. The heart been stabbed and there was blood in the pericardial sac.

Dr. Maundu examined both the accused persons on 20<sup>th</sup> March 2013 and found them fit to stand trial. PC Kipsang took photographs at the scene of the murder. CPL Mwangi visited the scene of crime with the scenes of crime personnel and found the body of the deceased lying beside a trench. He did not know who had killed the deceased. SGT Ngethe received a call about a body lying near Kayole Hospital. He went to the scene and observed the body of the deceased. SGT Ngethe told the court that on 7<sup>th</sup> March 2013 two young men had snatched a phone from someone at Kayole and were taken to the police by members of public. One of the two was identified as the 1<sup>st</sup> accused. He said he wanted to confess. The nature of his confession was not disclosed. SGT Ngethe said no one identified the accused persons or any of them as

having killed the deceased in this case.

Geoffrey and Akinyi also got information about the death of the deceased after it had happened. None of them identified any of the accused as having killed the deceased. Akinyi told the court that her husband left home at 5.00am on 20<sup>th</sup> February 2013 to go to work. She told the court that she was informed by neighbours of the death of her husband around 7.00am same morning.

Does this evidence establish a prima facie case against the accused persons or any of them? There is absolutely no evidence implicating them. Save for SGT Ngethe who introduced evidence that the 1<sup>st</sup> accused confessed without saying what he confessed to, there is no iota of evidence against the two accused persons before me or any of them. The case against the accused persons at the close of the prosecution case is not one in which this court properly directing its mind to the law and evidence could convict if no explanation is offered by the defence. It falls far short of the expectations of a criminal trial.

With no evidence connecting the accused persons or any of them with this offence I have no alternative but to find that the Simon Wekesa Muchuma and Brighton Kinuthia alias Collins alias Collo have no case to answer. Consequently, I hereby acquit each of them of the offence of murder as charged and order their immediate release from custody unless for any lawful reason they are so held. Orders shall issue accordingly.

**Dated, signed and delivered in open court this 5<sup>th</sup> day of May 2016.**

**S. N. MUTUKU**

**JUDGE**

**In the presence of:**

Ms Macharia for the prosecution

Mrs. Kinyori for the 1<sup>st</sup> accused

Mrs. Gulenywa for the 2<sup>nd</sup> accused

Mr. Simon Wekesa Muchuma, 1<sup>st</sup> accused

Mr. Brighton Kinuthia alias Collins alias Collo, 2<sup>nd</sup> accused

Mr. Daniel Ngumbi, court clerk