

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO.68 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

BENSON NJUGUNA KAMAU.....ACCUSED

RULING

Benson Njuguna Kamau, the accused, is charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of this offence are that on the 23rd July 2014 at Mwiki Mutirithia Area Kasarani District within Nairobi County he murdered Paul Nyamweya Nyamwamu (deceased). The accused pleaded not guilty to the charge. He is represented by the firm of Ekin and Associates, Advocates.

The prosecution presented evidence in support of their case that on 24th July 2014 the accused argued with the deceased over money. The accused assaulted the deceased occasioning him injuries on his head that led to his death. The accused and the deceased were, at the time of this incident, living with Paul Thuo Wanjiku, PW6, at Mwiki Kasarani Nairobi. At about 10.00pm on the date in question Paul was resting in bed when he heard the accused and the deceased arguing over money. Their argument was disturbing him and he told them to go out to allow him to rest because he was sick. The house in which they lived, the two being hosted by Paul until they found their own accommodation, was measuring 10 feet by 10 feet. There was no electricity and they were using candle light for illumination. Upon going outside, the argument continued and Paul heard a thud like someone falling or someone being hit with something. He decided to go out and find out what was happening. He found the accused holding a big stone (building block) in his hands intending to hit the deceased with it. Paul told him not to hit the deceased. At the time the deceased was lying on the ground with injuries on his head. One Mwangi was also at the scene and had been trying to separate them. The deceased was taken to Mama Lucy Hospital where he was treated and released to go home. He did not get well and was taken to Kenyatta National Hospital on 27th July 2014 where he died on 29th July 2014 while undergoing treatment. Dr. Joseph Ndung'u, PW5, testified that the deceased died due to post-traumatic meningitis secondary to orbital fracture due to blunt force trauma to the head.

Ms Ekin, advocate for the accused, submitted that there are contradictions in the prosecution case in respect of the evidence of PW1 and PW4 over who took the deceased to hospital. Counsel also raised issues with the date of death and the date the post mortem examination was conducted. Counsel also raised issue with the evidence of PW6 submitting that it had inconsistencies. She further submitted that one Mwangi who has been mentioned as having been present during the alleged assault did not testify. She urged the court to find that the prosecution has not established a prima facie case against the accused and ought to acquit the accused at this stage of the trial.

I have considered all the evidence and the submissions by counsels. At this stage of the trial the court is required to determine whether a prima facie case has been made out against the accused in order to place him on his defence. After my careful analysis of the evidence I am of the view that the evidence establishes a case **“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”** (see Ramanlal T. Bhatt v. R [1957] EA 332). Consequently, I do hereby find that the accused has a case to answer and shall be put to his defence. He is hereby informed of his rights under section 306 (2) of the Criminal Procedure. The issues raised by defence shall be fully addressed in the final judgement. Orders shall issue accordingly.

Dated, signed and delivered this 14th day of July 2016.

S. N. Mutuku

Judge

In the presence of:

Ms Nduati for the prosecution

Ms Ekin for the accused

Mr. Benson Njuguna Kamau, the accused

Mr. Daniel Ngumbi, court clerk