



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL CASE NO. 51 OF 2010
REPUBLIC.....RESPONDENT
VERSUS
REUBEN KIPNGETICH MUTAI.....ACCUSED
RULING

The accused **REUBEN KIPNGETICH MUTAI** faces a charge of **MURDER CONTRARY TO SECTION 203 as read with SECTION 204 OF THE PENAL CODE**. The particulars of the charge were that

***“On the 13th day of May, 2010 at Senetwet Village in Narok South District within the Rift Valley Province murdered DOMINIC KIPLANGAT KIGEN.**”*

The accused entered a plea of ‘**Not guilty**’ to the charge. His trial commenced before **Hon. Lady Justice Roseline Wendoh** on 31/5/2011. The prosecution led by the learned State Counsel called a total of six (6) witnesses in support of their case. **MR. KIBET** Advocate appeared for the accused.

The brief facts of the prosecution case were that on 13/5/2010 the deceased and the accused were engaged in a quarrel. A few minutes later the deceased was found lying on the ground with a stab wound on his shoulder. The deceased named ‘**Reuben**’ as the one who stabbed him. Neighbours rushed the deceased to hospital where he later died. The accused was later arrested and charged. On 4/5/2016 a full six (6) years after the trial started, the prosecution closed its case. This court must now examine the evidence to determine whether a prima facie case has been established sufficient to warrant calling upon the accused to defend himself.

The definition of what constitutes a prima facie case is to be found in the case of **RAMANLAL T. BHATT Vs REPUBLIC [1957] E. A 332** where it was held that

***“..... 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 would convict if no explanation is offered by the defence”**”*

In any murder charge the prosecution is required to prove the following key ingredients beyond reasonable doubt

- i. The fact as well as the cause of death of the deceased.

ii. Proof that the deceased died due to an unlawful act or omission on the part of the accused

iii. Proof that said unlawful act or omission was committed with malice aforethought.

From the evidence on record there is sufficient proof of the fact of the death of the deceased. All the prosecution witnesses say they saw the deceased lying on the ground bleeding from the shoulder. The witnesses rushed the deceased to hospital but unfortunately he died. All the prosecution witnesses who knew the deceased very well identify him as “**Dominic Kiplangat Kigen**”

Aside from proving the fact of death the prosecution is also under a duty to tender evidence sufficient to prove the **cause of death** of the deceased beyond reasonable doubt. Such evidence would ordinarily be in the form of a post-mortem report to be produced by the doctor/pathologist who performed the autopsy on the body of the deceased. In the case of **CHENGO Vs REPUBLIC [2013] eKLR**, the Court of Appeal sitting at Malindi held as follows:-

“The position appears to be that save in very exceptional cases stated above it is absolutely necessary that death and the cause thereof be proved beyond reasonable doubt and that can only be achieved by production of medical evidence and in particular, a post-mortem report of the deceased....”

Therefore it is clear that an order to prove the cause of death of a deceased person medical evidence is essential. In this case the State failed to call as a witness the doctor who performed the autopsy on the body of the deceased. This is despite the fact that this doctor was said to be based at Longisa Hospital within the Rift Valley and despite the court allowing the prosecution a period of over four years (from 2012 to 2016) to avail said doctor. The prosecution similarly failed to avail the investigating officer as a witness in this case. All this while the accused has been languishing in custody.

As matters stand the cause of the deceased’s death remains unproven. The court cannot presume that he died as a result of the stab wound. The effect of such a stab wound on his mortality could only be explained by a medical officer. A crucial ingredient of the offence of murder remains unproven. I find that no prima facie case has been established against the accused. I enter a verdict of ‘**Not Guilty**’ and I hereby acquit the accused of this charge of murder. The accused is to be set at liberty forthwith unless he is otherwise lawfully held.

Dated in Nakuru this 6th Day of September, 2016

Mr. Chigiti for DPP

Ms Yebei holding brief for Mr.Kibet

Maureen Odera

Judge

6/9/2016