



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYAMIRA**  
**CRIMINAL CASE NO.3 OF 2015**  
**REPUBLIC.....STATE**  
**-VERSUS-**  
**JARED NYANGAE.....ACCUSED**

**JUDGMENT**

**Introduction**

**JARED NYANGAE ARORI** is before this court on one count of murder contrary to **Section 203** as read with **Section 2014** of the Penal Code. The particulars thereof were that on 1<sup>st</sup> day of September 2009 at Nyangoge village in Nyamira North District within Nyamira County, jointly with another not before court murdered **CATHERINE MORAA NYARIBO**. He pleaded **NOT GUILTY** to the charge. The case proceeded to hearing during which the prosecution called five {5} witnesses.

**Facts of the case**

On the 1<sup>st</sup> September 2009 at 6.00p.m. one Robert Kamau alias Doctor visited the house of **Catherine Moraa Nyaribo** armed with a sword/a panga. The purpose was to settle difference between him and the old lady. However, at the time, the deceased was out and had gone to buy milk not far away from her house. Robert alleged that the deceased had abused him. Robert did not stay long but promised to back. At about 8.00p.m. Robert came back, this time in the company of the accused person, **Jared Nyangae Arori**. It is said that the two set the deceased's house on fire and the house burnt, they both entered, cut the deceased's left hand, decapitating completely. She also suffered serious injuries to her neck as a result she succumbed to the injuries. It alleged Robert and escaped in the confusion. Later the accused was arrested in 18/07/2012. Robert Karamu alias Doctor remains at large to date.

**Prosecution Evidence**

PW1-**Juvenile** then, although now he is over 18 years. He was in the house of the deceased at the time of the attack. The deceased was his grandmother. He testified that he was at home when Robert first visited the house while his grandmother had gone to bring milk from a place called Mwagegago. He testified that Robert was carrying a panga. That at 7.30p.m. when the grandmother had come they, uncle Onchere, himself and the grandmother were eating their supper, he noticed fire on the house. The grandmother took a tin lamp to ascertain what was happening. As she opened the door, Robert came in the house together with the accused person, Jared Nyangae Arori. The two had torches and the burning fire and the tin lamp was enough to reveal the identities of the two attackers. The granny on seeing them shouted and said "**they have finished me**". He testified that they cut her hand as she fell down they cut her neck. He stated that this happened as I watched. Then Jared said they have finished and they left. The

attack took 15minutes. PW1 was in the house, the attackers did not see me.

On cross-examination, however, responding to a question touching on Jared, the accused person, P.W.1 said: "I can confirm that Jared, the accused was not there. I did not see him.

This assertion was not rebutted in re-examination as there was no re-examination.

PW2- **Robert Osano**, another grandchild to the deceased was informed of the murder by one **Josephine Kerubo**, a daughter in-law to the deceased- she rang the witness and told her that the deceased was killed by the accused person.

On cross-examination, Robert Osano said emphatically. I cannot confirm Jared and Doctor killed my grandmother"

PW3: **Joseph Masinga Nyagetiria**, an area assistant chief went to the scene, at the along with O.C.S Nyamira and the D.C. were also present on 02/09/2009. He testified that whlle at the scene he receive information from one Josephine Kerubo a family member that Jared Nyangae Arori and Robert Karamu alias Doctor had earlier visited the deceased's house and asked if the deceased had arrived at her home. They said they come at night. And **[warned]** that they should not wake up.

On cross-examination he said: I was not informed who killed the deceased. I never heard who killed the deceased.

PW4 - **Dr. Silas Ayunga** produced the post mortem marked as **Exhibit -1** dated 11<sup>th</sup> September, 2009. By the post mortem the deceased, aged 74 years, died due cardiopulmonary arrest due to shock and bleeding as a direct cause of sharp penetrating trauma. The external appearance indicated inter alia, the left hand was totally decapitated and the head was decapitated but positioned with skin and sutured back to its position and there also deep cuts on the head left shoulder and left hands [which have been sutured].

**PW4** - the investigating officer of this case -**P.C. N .55613, Raymond Wambayi**, then a deputy O.C.S. at Nyamira police station. The information on who caused the death of **Catherine Moraa Nyaribo** was from family members including PW1. From this information, he surmised the accused at large was armed and

### **Defence's evidence**

The accused person in his unsworn statement stated that on the material day, i.e 1/9/2009 he was at his place of work in Kericho. His brother, Edward Nyangamwe rang him about the death of his step-mother, Catherine Moraa Nyaribo. He fame for the burial on 14th September 2009 and returned to Kericho.

However, on 18/7/2012 he was arrested while he had taken his child to the hospital. In the other words the accused person raised an alibi.

### **SUBMISSIONS**

A - by the defence counsel, the learned counsel Mr. Okemwa contends as following:

- (i) The prosecution have failed to prove their case beyond reasonable doubt as by law required.
- (ii) PW 1 under cross-examination stated that he did not see the accused person in the court at the scene. This assertion was not rebutted in re-examination as there was no re-examination by the prosecution.
- (iii) PW1 and one Onchere hid under the bed for Onchere and behind the house for PW1.
- (iv) PW2, PW3 and PW5 relied on information obtained either from PW1 or from Josephine Kerubo.

This is but hearsay evidence and is inadmissible.

B - by the prosecution counsel, Mr. Otieno reiterated the evidence of PW1 as being direct. The combination fire on house, tin lamp and torches were sufficiently bright for the purpose of both identification and recognition of the two attackers by PW1.

### **ANALYSIS OF EVIDENCE**

The evidence of PW1 E K O, appears direct and yet contradictory. For example, he says, he watched the attack for 15 minutes. And yet he says he hid behind the house and was not seen by the attackers. Secondly, the two attackers left after the attack when the accused Jared Nyangae Arori said we have finished. And in another breath, in cross-examination, PW1 says t the accused Jared Nyangae Arori, was not at the scene, he said “I can confirm that Jared, the accused was not there. I did not see him.

This assertion was not rebutted at all.

The defendant's alibi was not raised, as is the case early on in the trial.

### **CONCLUSION**

I make a finding that, in this case, no evidence, direct or indirect, has been adduced sufficiently linking the accused person, Jared Nyangae Arori to direct or indirect cause of the death of **Catherine Moraa Nyaribo**.

I agree with the defence that failure to put Onchere in the witness box, to throw light on what really happened on the night of 1<sup>st</sup> September 2009, was a grave mistake by the prosecution.

It is true Catherine Moraa was killed on the fateful night but by who, between the accused In the dock today or by the accused still at large?

Therefore since there appears to be some doubt, this doubt must be construed in favour of the accused person.

Accordingly, the Accused person Jared Nyangae Arori is hereby set at liberty forthwith unless otherwise lawfully held.

Orders accordingly.

Dated and delivered at Nyamira High Court this 6<sup>th</sup> day of October 2016.

**C.B. NAGILLAH**

**JUDGE**

**In the presence of:-**

Anyona hold brief for Okemwa for the Applicant/accused

Ochieng for the Respondent/state

Omayio - Court Clerk