

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 6 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

JOHN MAINA NJIIRI.....1ST ACCUSED

RULING

John Maina Njiiri (accused) is charged, jointly with others not before the court, with the murder of Allan Ngure Munyi (deceased) contrary to Section 203 as read with Section 204 of the Penal Code. It is alleged that the offence was committed on 7th January 2012 at Njiru Estate within Njiru District Nairobi County. The accused person pleaded not guilty to the charge. Mr. Mutitu is representing him. The prosecution called seventeen (17) witnesses in support of its case.

The mandate of this court at this stage of the trial is to determine whether the prosecution has established a *prima facie* against the accused person to require this court to call upon him to testify in his defence. Initially, the accused was charged jointly with one Solomon Thuku Kung'u. The proceeding in this case had reached the stage of the evidence of six (6) witnesses when Solomon Thuku Kungu jumped bail and this court issued a warrant against his arrest. To date the police have not managed to arrest him. The charge against him was withdrawn and the charge amended to reflect that the accused is charged alone, but jointly with others not before the court. This court directed that hearing proceed from where it had reached at the time of amending the charges after the defence told the court that this is what it prefers.

Upon taking over these proceedings, I received evidence of eleven (11) witnesses. I have examined and analysed all the evidence in support of the prosecution case. The deceased Allan Ngure was an employee of James Kiiru Mwangi, PW6, who operated transport business. Motor vehicle Registration Number KBG 134K was one of the vehicles owned by PW6. It was used for transport business and was being driven by the deceased. On 6th January 2012 the deceased was allowed to take the vehicle home with him instead of returning it to PW6 because he was required to pick chicken for a customer, Mercy Wanjiru Ngugi (PW10), the following morning. He did not pick the chicken as planned. His body was found at Njiru in the outskirts of Nairobi. According to Mercy the body had injuries on the face and his hands and legs had been tied with a rope which was tethered to some grass.

PW6 traced his vehicle, using tracing devices and with the help of police, at Salgaa market along Nakuru/Malaba Road. The accused and Solomon Thuku Kungu, at large, were arrested in connection with the vehicle and were charged with the murder of the deceased.

The death of the deceased was confirmed by Dr. Oduor Johansen, PW16, who examined the body. He told the court that the deceased had extensive bruises and lacerations on the head; multiple bruises on both arms; bruises on the right loin and ligature bruises across the neck. The doctor's opinion is that the deceased died as a result of head injury due to blunt force trauma and evidence of ligature strangulation.

My considered view is that the evidence adduced by the prosecution is sufficient to support the prosecution case and to persuade this court to find and hold, which I hereby do, that a *prima facie* case has been established against the accused person. Consequently, I find and hold that the accused person has a case to answer. In compliance with section 306(2) of the Criminal Procedure Code, the accused

person is hereby informed of his right to inform this court how he wishes to defend himself and whether he has witnesses to call in his defence. Orders shall issue accordingly.

Dated, signed and delivered this 10th day of November 2016.

S. N Mutuku

Judge

In the presence of:

Ms Matiru for the prosecution

Mr. Mutitu for the accused

Mr. John Maina Njiiri, the accused

Mr. Daniel Ngumbi, court clerk