

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

CRIMINAL CASE NO. 95 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

JOSEPH WACHIRA NJOKI.....ACCUSED

RULING

Joseph Wachira Njoki, the accused, is charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on 30th November 2011 at around 11pm at Ndarakwa Shopping Centre in Ndeiya Location in Kiambu West District (*sic*) he murdered Simon Ngaruiya Thairu, deceased. The accused pleaded not guilty to the charge.

The prosecution called 13 witnesses in support of its case. I took over the case after nine witnesses had testified before my predecessor Hon. Lady Justice Florence Muchemi. I have considered the evidence of all the witnesses to determine whether the prosecution has established a prima facie case against the accused to persuade this court to call upon the accused to make his defence. I have examined the evidence of Dr. Oduor Johansen, PW13, who examined the body of the deceased. The doctor found a stitched wound on the left side of the face from the inner left eye to the left side of the head. Internally the deceased had a fractured skull on the left side of the head and extensive bleeding in the brain. According to his opinion, the deceased died as a result of a penetrating trauma. The injuries confirmed by the doctor are consistent with those described by the witnesses who were present when the assault occurred.

I have also examined the evidence of Bernard Njenga Mungai, PW1, Stephen Kariuki Gichuru, PW5 and George Kimani Mungai, PW6. The four witnesses were drinking at Wasafiri Bar at Ndarakwa and witnessed the assault on the deceased. Evidence shows that an altercation occurred outside Wasafiri Bar when the accused prevented the three witnesses, among other people, from going home. PW6 pushed the accused off. This seemed to have annoyed the accused. He ran off towards his home nearby and came back holding a panga. He assaulted the deceased on the head and ran away without uttering a word. The deceased sustained a serious cut wound on the head. He was assisted to his home and later to Kamangu Health Centre where first aid was administered. He was transferred to Kikuyu Mission Hospital and later to Kenyatta National Hospital where he died three days later while undergoing treatment. The accused was later arrested and charged.

I am satisfied that this evidence meets the threshold of a case to answer against the accused and that the evidence establishes a prima facie case against him. I will and do hereby place the accused on his defence. This court hereby informs the accused person of his rights under section 306 (2) of the Criminal Procedure Code. Orders shall issue accordingly.

Dated, signed and delivered this 9th day of November 2016.

S. N. MUTUKU

JUDGE

In the presence of:

Ms Matiru for the prosecution

Mrs. Nyamongo for the accused

Mr. Joseph Wachira Njoki, the accused

Mr. Daniel Ngumbi, court clerk