



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL CASE NO. 67 OF 2010

REPUBLIC PROSECUTOR

V E R S U S

PRISCILLA JEPLETING 1ST ACCUSED

FRANKLINE K. TANUI 2ND ACCUSED

PETER KIPKEMEI 3RD ACCUSED

RULING

1. The three accused persons are jointly charged with the offence of Murder contrary to *Section 203* as read with *Section 204* of the *Penal Code*. It is alleged that on the 19th day of November, 2010 at Kipsimo in Mosoriot sub location, Mosoriot location, Nandi District within Rift Valley Province, the accused persons murdered *Stephen Cheboi Chelanga* alias *Mzee Nyanya*.

2. Each of the accused persons denied the charges. In support of its case, the prosecution called a total of ten witnesses. The court record shows that the trial opened before *Hon. Mshilla J* who heard a total of four witnesses. The case was taken over by *Hon. Ngenye J* on 19th February, 2013 and she proceeded to hear another four witnesses. I took over the proceedings on 9th October, 2014 and heard the remaining two witnesses.

3. Throughout the trial, the learned counsel *Mr. Okara* represented the 1st and 2nd accused persons while learned counsel *Mr. Miso* represented the 3rd accused. At the close of the prosecution case, the learned prosecuting counsel *Ms Moku* and the counsel on record elected to make oral submissions under *Section 306* of the *Criminal Procedure Code (CPC)*.

4. I have considered the evidence adduced by all the prosecution witnesses and the submissions made on behalf of the state and the accused persons. I find that there is no direct evidence linking any of the accused persons to the murder of the deceased since none of them was seen by any of the witnesses committing the offence. The prosecution relied solely on circumstantial evidence.

5. At this stage of the proceedings, the court is required to evaluate the evidence on record to establish whether or not the prosecution had established a prima facie case sufficient to put the accused persons on their defence. A prima facie case was defined in the celebrated case of **Rhamanlal Trambaklal Bhatt V Republic (1957) EA 332** where the Court of Eastern Africa the predecessor of our Court of Appeal held

as follows;

“ ... Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we cannot agree that a prima facie case is made out if, at the close of the prosecution, the case is merely one which on full consideration might possibly be thought sufficient to sustain a conviction. This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case. Nor can we agree that the question whether there is a case to answer depends only on whether there is “some evidence, irrespective of its credibility or weight, sufficient to put the accused on his defence.” A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence”

6. In this case, it is clear evidence that the prosecution case is premised on suspicion that the accused persons had a role to play in the death of the deceased because accused 1 was indebted to him in the sum of Kshs.131,000 and the 2nd and 3rd accused persons had allegedly assaulted the deceased on the night prior to the day he was murdered. There is also evidence that accused 3 was seen riding with the deceased in the morning of 19th November, 2015 at around 7.15 a.m in a motor cycle he had hired from PW1. PW1 confirmed in his evidence that accused 3 returned the motor cycle to him on the same day at around 11.36 a.m. The deceased was found dead the same day at around 5 p.m.

7. No evidence was led to show the deceased met his death. A panga found at the scene which was suspected to be the murder weapon (exhibit 1) was not submitted for forensic examination. This was a fatal omission by the investigating officer because had forensic investigations been conducted, their results would have established whether or not any of the accused persons had participated in the murder of the deceased.

8. I have no doubt that given the evidence on record, there is a very strong suspicion that the accused persons may have been involved in the murder of the deceased. But the law is that the prosecution must prove the charges against an accused person beyond any reasonable doubt and unfortunately, suspicion alone no matter how strong cannot take the place of evidence. It is my finding that even if the accused persons were put on their defence and they elected to stay silent in their defence as they are entitled to do, the evidence on record would be insufficient to sustain a conviction for the offence of murder.

9. For the foregoing reasons, I find that the prosecution has failed to establish a prima facie case against each of the accused person on the basis of which they can be placed on their defence. I therefore record a finding of not guilty against each of the accused person. Each accused is accordingly acquitted under *Section 306 (1) of the Criminal Procedure Code*. Accused 2 and Accused 3 who are in remand custody shall be set free forthwith unless otherwise lawfully held.

It is so ordered.

C. W. GITHUA

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 3rd day of November, 2016

In the presence of:-

Each accused person

Miss Oduor for the state

Ms Naomi Chonde court clerk

No appearance for Mr. Okara for 1st and 2nd accused and Mr.Misoi for the 3rd accused.