



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT MACHAKOS**

**CRIMINAL CASE NO. 18 OF 2013**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JACOB MWENDWA NGUCIA.....ACCUSED**

**RULING**

Jacob Mwendwa Ngucia, the Accused person pleaded not guilty to two counts of murder contrary to section 203 as read together with section 204 of the Penal Code. The particulars of the charges as stated in the information from the Director of Public Prosecutions dated 22<sup>nd</sup> April 2010 are that on the 4<sup>th</sup> day of April 2013 at 360 estate Syokimau in Athi River District within Machakos County, he murdered Josphine Kimutu and also murdered Alyana Muthoni.

Trial commenced and four prosecution witnesses have so far testified. The fourth witness was Inspector Cyprian Otieno Musanya, and during his testimony on 20<sup>th</sup> June 2016 he testified that he conducted an identification parade during which the accused person was identified by some witnesses. The learned counsel for the accused person thereupon, after cross-examination of the witness, applied to have members of the identification parade brought to court for observation, as he was contesting that the said members were similar to the accused. It was his view that the Court must be satisfied that the identification was done well, and that it is an assumption that the advocate present knew of the processes required to be taken.

The prosecution counsel, Ms Lillian Mogoi in response submitted that the accused person had a competent advocate during the identification parade, who signed the report of the identification parade signifying his satisfaction with the identification parade, and therefore the legal threshold was met. Further, that it might also not be possible to trace the members of the identification parade.

In determining this application and particularly, the Court's role in identification parades, I have had regard to the objective of identification parades, which are essentially one of the methods through which an accused person is identified as having been the one who committed an offence by witnesses. There are rules of procedures that apply to conduct of identification parades to ensure that this evidence is reliable, which are presently in the Police Force Standing Orders under the National Police Service Act 2011.

Coming to the court's role in such an identification parade, the applicable rules do not provide that the Court can call members of an identification parade for observation, and no such rule of criminal procedure was cited by the learned counsel for the accused person. In addition, an identification parade is an evidence gathering process and not a judicial process, and the procedural rules require that it is also held in the presence of the accused and his friend or legal counsel, who is thereby enabled to observe, and later bring to light, any unfairness in the way in which the parade was conducted, or any weakness in the way in which the witnesses made the identification.

The learned counsel has not disputed that there was a legal counsel for the accused who was present, together with the accused, during the said identification parade, and he will have the opportunity to provide his evidence as to any irregularities that the said counsel and/or the accused noted during the identification parade, including calling any members of the identification parade as witnesses, for this Court to make its decision as to the propriety of the said identification parade and the admissibility and/or weight of its finding.

In summary, this Court cannot be an active participant in the investigations and evidence gathering by the parties, and can only act on the evidence brought before it as regards the identification parade by both parties.

The application by the learned counsel for the accused person for the production of the members of the identification parade is accordingly denied for the foregoing reasons.

Orders accordingly.

**DATED AND SIGNED AT MACHAKOS THIS 1<sup>ST</sup> DAY OF NOVEMBER 2016.**

**P. NYAMWEYA**

**JUDGE**