



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO. 44 OF 2010

REPUBLIC PROSECUTOR

VERSUS

ELISHA ANDAI KARANI ACCUSED

RULING

1. The purpose of this ruling is to determine whether or not the accused person herein, Elisha Andai Karani, has a case to answer on the two counts of murder contrary to section 203 as read with section 204 of the Penal Code. In Count I, it was alleged that on the 18th day of October 2010 at Ebusembe village in Central Bunyore Location within Vihiga District within Western Province he murdered Alice Karani. In Count II, it was alleged that on the 18th day of October 2010 at Ebusembe village in Central Bunyore Location within Western Province, he murdered Grace Ismael. The accused denied both counts.
2. The prosecution called 8 witnesses among them **Joy Omenda Omukhayo** who testified as **PW1**. Her testimony was to the effect that on 18th October 2010 at about 5.00 p.m., she was at her home in the company of the first deceased when the accused came from his house carrying a panga and tried to cut the deceased. When she told the accused not to assault the deceased, the accused heeded her advice and left. The deceased then rose up to go and un-tether her cows. The accused ran after deceased and assaulted her with the sides of the panga. The accused continued chasing the deceased through the rain while still holding the panga.
3. During cross-examination, PW1 stated that she did not witness the accused cut the first deceased with the panga.
4. **PW8** was **Number 69112 Police Constable David Odongo** of Luanda Police Station, Crime office. He was one of the police officers who visited the scene after getting a report of the murders. He assisted in removing the bodies of the two deceased persons to Sagam Hospital for preservation. He also attended the post mortem examinations which were conducted on 23/10/2010.
5. **PW2, Noel Atuor** testified that she saw the accused person assaulting Grace Ismael with a panga and that after the assault, the deceased fell down and died. She reported the incident to the area Assistant Chief, one David Olocho who testified as PW4.
6. **Dr. Awino Bob** testified as **PW6**. He is the one who carried out the post mortem examination on the bodies of Alice Karani (1st deceased) and Grace Ismael (2nd deceased). His evidence was that the cause of death of the first deceased was massive intracranial haemorrhage and lacerated brain tissue secondary to assault. According to Dr. Awino, the first deceased had multiple deep cut wounds on the head with multiple skull fractures. There were also cut wounds on the face and the brain tissue had lacerations.
7. With regard to the second deceased, Dr. Awino testified that she had multiple deep cuts on the distal third of the right forearm. She also had a comminuted fracture of the distal third right

- forearm, a deep cut on the left hand and a chopped finger. Dr. Awino also told the court that the second deceased had a deep cut wound on the middle third of the left forearm while the head had deep multiple cuts with multiple fractures on the temporal region. The doctor opined that the cause of death was intracranial haemorrhage due to head injury secondary to assault. Dr. Awino produced the two postmortem reports as PExhibits 2 and 3 respectively.
8. At the close of the prosecution case, counsel for the accused Mr. Khayumbi, did not make any submissions and asked the court to give a ruling.
 9. After a careful analysis of all the evidence that is on record, the question that arises for determination at this stage is whether the prosecution has made out a prima facie case that warrants the making of a finding that the accused person herein has a case to answer. A prima facie case is one where a party has produced enough evidence to allow the court to infer the fact at issue and rule in the party's favour. (**See BLACKS LAW DICTIONARY, SEVENTH EDITION P. 1209**). At this stage, the prosecution is not required to prove the allegations against the accused person beyond any reasonable doubt.
 10. Applying the facts and the law, I am satisfied that the evidence on record establishes a prima facie case against the accused person. In other words, the accused has to answer to both counts of murder. I accordingly put the accused person on his defence under **section 306 (2)** of the Criminal Procedure Code.
 11. The accused may defend himself by giving either sworn or unsworn evidence. If he chooses to give sworn evidence, the prosecution will cross examine him on the same. The accused may also choose to remain silent and let the court decide the case on the evidence that is on record. In each case, the accused person has a right to call witnesses in his defence.
 12. I now call upon the accused person to indicate to the court how he intends to proceed with his defence.
 13. Orders accordingly.

Ruling delivered, dated and signed in open court at Kakamega this 9th day of April 2015.

RUTH N. SITATI

JUDGE

In the presence of

Mr. Ngetich (present) - For State

Mr. Khayumbi (present) - For Accused

Mr. Juma - Court Assistant