

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL APPEAL NO. 6 OF 2009

BETWEEN

CLINTON INGAJI TARI..... APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The accused CLINTON INGAJI TARI who charged with the offence of murder contrary to Section 203 as read with Section 214 of the Penal Code the particulars of which were that on 12th day of January 2009 at Ekerubo village in Borabu District within Nyanza Province murdered Ronald Kirage Aenda.
2. He pleaded not guilty to the said charges and his trial commenced before Musinga J as he then was on 10/5/2010 wherein he took the evidence of three prosecution witnesses on 8/11/2011 the matter proceeded further before Hon. Sitati J who took the evidence of pw4.
3. On 6/5/2013 Muriithi J took the evidence of Pw5 and on 19.5.2015 I declined to grant further adjournment herein thereby causing the state to close its case.
4. The issue therefore for determination is whether the state has made up a prima facie case to enable the accused to be put on his defence.
5. It was submitted by Mr. Omwenga for the accused that no medical evidence had been produced to prove that the deceased died and that among all the prosecution witnesses none saw the accused person kill the deceased.
6. On behalf of the state Pw1's evidence was that he had employed the deceased whom he sacked and employed the deceased. On 12/1/2009 he was called and told that his store had been broken into and his worker (the accused) missing. Pw2's evidence was that the accused was not in the compound in January 2009 and had never visited the home for over one (1) year after he was sacked.
7. It was Pw2's evidence that the following day she was called by the Tom who used to work at the pw1's home from Manga and told that he had met the accused with some maize and he was blood stained and that caused her to scream attacking people who checked the room where the deceased used to sleep and found the body on the bed covered by black polythene paper.
8. It was pw3 evidence that when arrested the accused allegedly made confession using Mf1. Pw4 arrested the accused and recovered the items stolen from Pw1's home the day the deceased was killed which evidence was confirmed by Pw4.
9. From the evidence tendered by the prosecution and as analyzed herein above I am satisfied that the prosecution has made a prima facie case to enable the accused person be placed on his defence in accordance with Section 306 of the criminal procedure code which I hereby do. It is now upon the accused person with the assistance of his legal counsel to decide how he wishes to defend himself.

Delivered, signed and dated at Kisii this 2nd day of July 2015.

J. WAKIAGA

JUDGE

In the presence of:

Mr. Ondari for Mr. Omwega advocate for the accused.

Mr. Mojale for the state.