

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 99 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

WYCLIFF MWILU MUTINDA.....ACCUSED

RULING

Wycliff Mwilu Mutinda, the accused, is charged with murder contrary to section 203 read with section 204 of the Penal Code. It is alleged in the particulars of the offence that on the night of 26th/27th July 2013 at Kiamumbi Area Kahawa West in Kasarani within Nairobi County jointly with another not before the court, murdered John Ndungu Kamande. The accused had been jointly charged with one Patrick Kyalo Nzioki who has since passed on. The information was amended to reflect these changes.

The circumstances of this case are that the deceased John Ndungu Kamande, who worked as a caretaker in a certain building in Kahawa West Nairobi, went missing on or about 27th July 2013. His wife Anastasia Muthoki, PW1, lost track of him after failing to raise him on his mobile phone. She travelled to Nairobi to find out what the problem was and found his house empty of all household items and her husband missing.

The matter was reported to the police at Kiamumbi Police Station. Investigations by Police Officers from Kasarani Police Station led to the recovery of a mobile phone (Ex. 3) allegedly belonging to the deceased. The person found with the phone, one Collins (not a witness) led police to another person named as Muritu (not a witness). Muritu told the investigating officer, Anisia Munene (PW4) that the phone had been taken to him for repair by the accused. He identified the accused to the police. The accused was arrested. Police recovered from him and from his house clothing items: scarf, blanket, mattress, shirt, shoes, socks and trouser, all produced as exhibits. These were identified by PW1 as belonging to her husband. The accused also led police to a septic tank in the compound of the building where the deceased had been working as a caretaker. He told the police that he had been asked by one Kyalo to assist him (Kyalo) to dispose of a body in the said septic tank.

The body of the deceased was retrieved from the tank on 18th September 2013. It was badly decomposed and according to the evidence of the Dr. Dona Nyamonga, the body was skeletonized. Evidence shows that using dental formula, the relatives of the deceased were able to identify the body as that of John Ndungu Kamande the deceased.

I have considered all the evidence tendered by the prosecution together with submissions by both counsel from the opposing sides and the authorities cited by the defence. This court is required at this stage to consider whether a prima facie case has been established against the accused person. I have considered the evidence that several clothing items were found in the house of the accused and that he was found wearing some of the items; that he led police to the recovery of the body. I find this evidence sufficient to establish a prima facie case against him. I am convinced at this stage that the accused has a case to answer and I do hereby place him on his defence.

In compliance with section 306 of the Criminal Procedure Code the accused is informed of his right to address the court on the manner he intends to give his defence and whether he will call any witnesses. Orders are made accordingly.

Dated, signed and delivered in open court this 15th day of October 2015.

S. N. MUTUKU

JUDGE

In the presence of:

Ms Magoma for the prosecution

Ms Makofu for the accused

Mr. Wycliff Mwilu Mutinda the accused person

Mr. Daniel Ngumbi, Court Clerk