



IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 32 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

DAVID MUCHIRI.....1ST ACCUSED

ALFRED MWAI MIANO.....2ND ACCUSED

RULING

The two accused persons namely **David Muchiri** (hereinafter referred to as the 1st accused) and **Alfred Mwai Miano** alias **Muriithi** (hereinafter referred to as the 2nd accused) are jointly charged with the offence of **Murder contrary to Section 203 as read with Section 204 of the Penal Code**. The particulars of the charge were that:-

“On the 27th day of April 2012 at Maralal Township within Samburu County jointly murdered Samson Lepurdati.”

Both accused entered a plea of **‘not guilty’** to the charge. The prosecution led by the learned State Counsel called a total of nine (9) witnesses in support of their case. **Mr. Mongeri Advocate** appeared for the accused persons.

The brief facts of the prosecution case are as follows:-

PW1 Josephine Paterla Lepurudati who lives in Maralal Township told the court that the deceased **Samson Leprudati** was her husband. On 27th April 2010 at about 8.00p.m. **PW1** was inside her house feeding her children. She heard screams from outside her gate. Upon rushing out she heard her husband calling out saying that he had been stabbed. **PW1** told the court that she found the deceased lying outside the gate with a stab wound in his stomach and his intestines were falling out. **PW1** screamed for help and neighbours came. She then rushed to report the incident to the police station.

PW4, Daniel Lepuradit is a brother to the deceased. He told the court that on the material night he was at the home of the deceased. The wife of the deceased **PW1** went out to open the gate. She ran back shouting that her husband had been stabbed. **PW4** ran to the scene and found two (2) people. He hit one man with a stick and the man fell down. As the crowd gathered the man ran away. **PW4** and others took the deceased to the police station. He was later taken to hospital where he died. **PW4** told the court that he recovered a small bloody knife at the scene the following day. He took the knife immediately to the police station.

Regarding the fact and the cause of death of the deceased there can be no doubt. Several witnesses

testified that they saw the deceased lying outside his gate with a stab wound on his stomach from which his intestines were spilling out.

PW7, Dr. John Karina Kuria is a medical officer attached to Maralal Sub-county Hospital. He produced the post mortem report which indicated that the cause of death of the deceased was found to be **‘cardio-pulmonary failure due to left ventricular laceration’**.

At the close of the prosecution case submissions were made by defence counsel to the effect that no prime facie case had been established to warrant the 2 accused being called upon to give their defence to the charge.

I have carefully considered the evidence adduced by the prosecution witnesses. There is no witness who actually saw either of the accused persons attack and/or stab the deceased. Both **PW1** and **PW4** told the court that they arrived at the scene **after** the incident had occurred. They merely found the deceased lying on the ground with a stab wound to his stomach and his intestines falling out. In her evidence in chief, **PW1** told the court that the deceased said to her that **‘Muriithi’** had stabbed him. However, under cross examination by defence counsel **PW1** admits that in her statement she said that deceased said **“Mama Stella come out and help me since I have been stabbed by some people”** (my emphasis). From this it appears that deceased merely said that **‘some people’** had stabbed him and he did not specifically name any person. **PW1** goes on to admit under cross-examination that:-

“I have not mentioned Muriithi but some people said Muriithi.”

Who are these people who named Muriithi and why were they not called to testify if they witnessed who stabbed the deceased. It must be remembered that this incident occurred at 8.00p.m. It was night and no doubt it was dark. **PW1** admits that:-

“There is no electricity at our residence, but other plots have connected electricity”

It is not clear how far the other plots were from her residence and how powerful the lights from those neighbouring plots were. **PW1** does not even state what type of lighting was in use in her own residence, was it a tin lamp or a lantern. It is not clear what type of lighting if any was available outside the gate where the deceased was attacked. How would the deceased in these circumstances have been able to see and identify his attackers? All these critical questions remain unanswered.

PW2, Alice Lungabati and **Elizabeth Lesimati** both testify that they did not witness the attack and therefore have no idea who stabbed and killed the deceased.

PW4 is a brother to the deceased. He told the court that he rushed out upon hearing the deceased’s wife scream for help. He states that he found two (2) people outside the gate and that he heard one man say **“Muriithi usiniache.”** He hit one of the men with a stick but the man escaped and ran away. Under cross-examination **PW4** confirms that it was dark. He is not able to state how he saw the accused. The name Muriithi is a common name and **PW4** does not explain how he knew that it was the 2nd accused being referred to if he did not see him. In addition **PW4** has not claimed that he was able to recognize the voice of the 1st accused as the one who uttered the words. Indeed under cross-examination **PW4** admits at page 20 line 8:-

“I do not know one of the accused. I heard one say “Muriithi usiniache.” Is when I thought one of the accused was called by that name.”

It is clear by this that **PW4** was not in any way sure of the identities of the suspects. Even the investigating officer **Sergeant Claud Mutoli** admitted at page 37 line 20:-

“I cannot say who specifically identified the accused....”

It is clear from all the above that evidence of identification falls below the par in this case. There is no clear unequivocal identification of the 2 accuseds as the persons who stabbed the deceased. Even on the basis of circumstantial evidence there is nothing to link the 2 accused persons to the '**actus reus**' of this offence.

Although it is claimed that a blood stained knife recovered at the scene was handed over to the police no forensic examination was conducted to establish the exact source of the blood on that knife. Was it human blood and if so was it the deceased's blood? These crucial questions remain unanswered.

Based on the foregoing I find that the evidence adduced by the prosecution in this case lacked cogency. The standard of proof has not been met. In my opinion no prima facie case has been established and I find that the 2 accused persons have no case to answer. I therefore enter a verdict of '**Not Guilty**' in line with Section 306(1) of the Criminal Procedure Code. Both accused persons are to be set at liberty forthwith unless otherwise lawfully held.

Dated in Nakuru this 6th day of October 2015. Mr. Chirchir for State. Mr. Mongeri for both accused.

MAUREEN A. ODERO

JUDGE