

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL CASE NO. 29 OF 2010

REPUBLIC.....PROSECUTOR

VERSUS

MUSA HINDA JOASH.....RESPONDENT

RULING:

The Accused Musa Hinda Joash was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.

Particulars of the charge are that on 2nd day of May 2010, at around 4.40 p.m. at Lessos Trading Centre in Nandi South District within the Rift Valley Province, murdered Paul Jo'mwanyi alias Mwite.

At the close of the prosecution's case on 15th July, 2013, only one prosecution witness, namely Samuel K. Mutai had testified. His testimony was that on 2nd May, 2010 at 4.00 p.m. he was going home from Lessos Centre when two people approached him and told him that some people had stabbed another with a knife. He said that he proceeded to the scene and found the accused and the deceased who had been stabbed and lay on the ground bleeding from the chest. He said he arrested the accused and escorted him to Lessos police station. He said he returned to the scene with two police officers and found that the deceased had been taken to Lessos Medical Clinic. He said they went to the said clinic but found the deceased had already died. He said they collected a knife from the scene which the accused had used to stab the deceased.

On cross-examination, PW1 said that he was told by the deceased's brother that it is the accused who had stabbed the deceased.

Apparently, the prosecution had to close its case prematurely after being unable to secure the attendance of other witnesses. Obviously, the evidence of PW1 leaves very many gaps which could only be sealed by other witnesses. Equally so, many questions remain unanswered. For instance, who saw the accused stab the deceased? Who investigated the case and who concluded that the accused should be charged? Why did PW1 not identify the murder weapon he said he and police collected from the scene?

It is also not clear why close to four years down the line, only one witness testified. Even the deceased's brother who reportedly told PW1 that it is the accused who stabbed the deceased did not come to court as a witness. In all, the evidence on record is so scanty, so insufficient as to found a case against the accused.

The standard of proof as to whether the prosecution has established a prima facie case was laid down in the reknown case of **Ramanlal Trambaklal Bhatt -vs- Republic (1957) E.A, 332** in the words that;

“The question whether there is a case to answer cannot depend only on whether there is 'some' evidence irrespective of its credibility or weight sufficient to put the accused on his defence. A mere scintilla of evidence can never be enough; nor can any amount of worthless discredited evidence”

In the upshot it is my considered view that a case has not been made out against the accused just sufficiently to require him to make a defence. I accordingly acquit him under Section 306(1) of the

Criminal Procedure Code.

DATED and **DELIVERED** at **ELDORET** this 8th day of May, 2014.

G. W. NGENYE – MACHARIA

JUDGE

Gakuo holding brief for Miyienda for the Accused.

Ms Oduor for State.