



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

HCCR NO. 63 OF 2010

LESIIT J.

REPUBLIC.....PROSECUTOR

VERSUS

PASCASIO MWENDA MUTHURI.....ACCUSED.

RULING

1. The accused **PASCASIO MWENDA MUTHURI** is charged with Murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 14th day of September, 2010 at Gaitune village Nkandone Sub Location in Nduruma Location Imenti Central District within Eastern Province murdered Anthony Mbaya.
2. The prosecution called four witnesses. The facts of the prosecution case are that the deceased was in company with others who bought traditional brew from PW1 Ann Kendi. It was about 8 pm when PW1 had sold most of the tradition brew and had only one cup left. Between Murithi the deceased and Murugu. Murithi told PW1 to give that cap to the deceased. She therefore poured the cup of brew to the deceased and then started going back home which was uphill. PW1 stated that she was hit by Murithi and she fell to the ground. It was at that point that one Erastus went to rescue her. When Erastus went to rescue PW1 from Murithi one Kithioro joined to beat PW1. PW1 testified that she ran back home and then returned with a torch but Murithi and Kithioro who were brothers ganged against her again and hit her as a result of which the torch fell down. PW1 testified that she ran back home and returned with a hurricane lamp and that upon her return to the scene she found that the people had scattered and ran away and that only the deceased was left lying down. PW1 stated that when she turned the deceased she saw a stab wound on the neck and the deceased was bleeding. She then ran to the family of the deceased and reported to the mother who was PW3. By the time PW1 and 3 went back to the scene they found the deceased already dead.
3. According to PW3 PW1 went to her home calling out her name and saying that the deceased had been stabbed by one Muriithi Kabichu. PW3 also said that when she went to the scene to check on her son she heard the accused who was inside his house near the scene where the body was found say “**remove that dead body from there**”.
4. The Post mortem examination was carried out by Dr. Macharia on 20th September 2010. His report was produced by Mr. Koome Guantai. The Postmortem findings on the body were that it had a 2 cm stab wound on the right side of the neck with laceration of the vertical lobe of the right lung and damage of carotid vessels. The cause of death was damage to the neck blood vessels as a result of a stab wound.
5. The Investigating Officer of this case CIP Makori is deceased. PC Olouch PW4 assisted him in

- the investigations and he came to testify in that regard. PW4 played a minimal role because he collected the body from the scene and attended the post mortem. PW4 stated that he was aware that PW1 implicated Murithi Kabichu as the one who stabbed the deceased and that he was unable to find him.
6. The police in this case did very shoddy investigations. The simple reason for so finding is the fact that PW1 mentioned several people who were present during an attack apparently against her. However, none of these people were called as witnesses. They include one Murithi and one Kithioro who are said to be brothers and who PW1 claims fought her shortly before the deceased was injured. There was also one Erastus and one Murugu all who were present at the scene when the scuffle between PW1 Murithi and Kithioro started.
 7. PW1 was therefore the only person called who was at the scene just before the deceased was fatally wounded. PW1 admitted that the accused is her brother. Nowhere does she mention the accused person being present at the scene at the time in question. The only person who mentions the accused was the mother of the deceased PW3. She mentioned the accused in relation to a statement he made from inside his house at the time PW3 saw the deceased wounded for the first time. According to PW3 the accused person had made a derogatory remark "*remove that dead body there*".
 8. The only evidence against the accused is the derogatory remark in it to the effect that the dead body should be removed from near his compound. That is not evidence against the accused person as it does not establish that the accused person was involved in any manner with the death of the deceased. It does not establish that either the accused inflicted the fatal injury or acted in agreement with the one who inflicted the fatal injury on the deceased. The evidence against him can be best be described as suspicion.
 9. **In SAWE –V- REP [2003] KLR 354** , the Court of Appeal held as follows:

“The burden of proving facts which justify the drawing of this inference from the facts to the exclusion of any other reasonable hypothesis of innocence is on the prosecution. This burden always remains with the prosecution and never shifts to the accused.

Suspicion, however strong, cannot provide the basis of inferring guilt which must be proved by evidence beyond reasonable doubt.”

10. I find that the evidence against the accused person is merely that of suspicion and that the same cannot found a conviction. Consequently I find that the prosecutions have failed to establish a prima facie case against the accused person to justify the court to place him on his defence. Accordingly I give the accused the benefit of doubt and acquit him at this stage under section 306 of the Criminal Procedure Code.

DATED SIGNED AND DELIVERED THIS 5TH DAY OF JUNE, 2014

LESIT J

JUDGE.