



IN THE HIGH COURT OF KENYA

AT NAKURU

MURDER NO. 84 OF 2009

REPUBLIC.....PROSECUTOR

VERSUS

HARRISON MUNYURU KARIUKI.....1ST ACCUSED

BENSON MURAGE MURUGU.....2ND ACCUSED

RULING

The two accused namely; Harrison Munyuru Kariuki and Benson Murage Murugu are charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. It is alleged that on the night of 20th and 21st January 2009 at Shabaa area of Maralal Township, they murdered one Newton Ndungu Ngatunyi. The two denied the offence and the prosecution called a total of 5 witnesses in support of their case.

Justice Ouko heard the first four witnesses before he was promoted to the Court of Appeal. Directions were taken that this court continue with the proceedings from where that court stopped and took evidence of the last witness.

Rachizi Kibara Runo (PW1) told the court that he bought a motor cycle on 16/12/2008 and gave it to the deceased to operate as a taxi. He used to return the motor cycle in the evenings. On 21/1/2009, he did not return. On 22/1/2009, he went to enquire about the deceased's whereabouts but did not get him. He reported to police. He hired several motor cycles to look for him. PW2, David Kanyi and Stephen Njagi Waweru (PW3) were some of the taxi drivers who were involved in the search. The search did not bear any results. The search took them to Nyahururu and he reported at (Maile Nanne) Mairo Inya where a suspect by name of Munyuru was held. He informed them that the deceased had gone to Rumuruti and while there he received a report that the deceased's body had been found in a thicket. His motor cycle was recovered in a house in Matungi and was photographed. He had the documents because it was not yet registered. The motor cycle was found in a house with an old man who was not arrested.

PW2, David Kanyi, a taxi (motor cycle) operator at Marala told the court that he knew both the 1st accused and the deceased as taxi operators at Maralal. Deceased had only done that work for about a month and had been taught by the 1st accused. He told the court that PW1 had come to look for the deceased at his place of work but he did not know where he was. They told police to interrogate the 1st accused who worked closely with the deceased but the 1st accused could not be found. The 1st accused

was found in Maili Nane and he told them that the deceased took a client to Nyeri. He was picked up for further questioning. PW2 denied knowing who the 2nd accused is. PW2 had last seen the deceased at the stage on 20/1/2009 at lunch time.

PW3, Stephen Njagi Waweru knew both the 1st accused and the deceased. He denied knowing the 2nd accused. He was present when PW1 came looking for the deceased on 21/1/2009. He said he left the deceased at the stage on the night of 20th -21st January 2009 about midnight. PW3 helped in the search for the deceased to no avail. They went in search of the 1st accused who associated with the deceased and he was found at Manguo; that the 1st accused tried to run away on seeing PW3 but was chased and caught. The 1st accused denied knowing where the deceased was. Police arrested him. PW3 learnt that the deceased's body had been found.

PW4, Meshack Mwangi is a brother of the deceased who identified the deceased's body on 24/1/09 to the doctor for purposes of post mortem.

PW5, Raymond Wachira Gakingi, Chief of Gatero Location recalled that on 21/1/09, he was at Nyahururu when he received information that 3 (three) suspicious people had been seen in a house. Members of public were asked to surround the bar while the people entered with a motor cycle till the chief returned to interrogate them. He found Elijah amongst the 3. He knew Elijah who said one of the persons was his brother and another neighbour in Sipili. The 2 were interrogated but they could not produce their identification cards. He advised them to leave the area which they did. He later learnt that a crime had been committed in Maralal. Elijah was sought and arrested. A phone left behind by the said people was handed over to them. PW5 did not know who the 2nd accused was but they had been with Elijah.

Having heard the prosecution case, the only issue is whether the prosecution has established a prima facie case against the accused persons to warrant them to be called upon to enter their defences.

Nobody witnessed how the deceased met his death. His body was found in a thicket, about 2 days after he had disappeared.

PW2 and PW3 are the ones who suspected the 1st accused because of his close relationship with the deceased. With the disappearance of the deceased, the 1st accused also disappeared from Maralal and was arrested far away in Maili Nane. That makes him a suspect. However, there is no direct or circumstantial evidence adduced linking the 1st accused with the deceased's murder.

The complainant's motor cycle was also recovered in somebody's house but the person in whose house it was found was never called as a witness or charged.

As regards the 2nd accused, none of the witness who testified know who he is or why he was arrested or his connection to the murder. Maybe the witnesses who were not called may have information on him. Despite many adjournments the prosecution was unable to call the remaining witnesses.

Has a prima facie case been made against the accused persons? If the court were to call the accused persons to defend themselves and they exercised their right to remain silent in their defence, this court would have to acquit the accused persons. It is not for the accused persons to fill in the gaps for the prosecution. It means that there is not sufficient evidence upon which the accused persons can be called upon to defend themselves and they are hereby acquitted of the charge of murder under **Section 306** of the **Criminal Procedure Code**.

DATED and DELIVERED this 9th day of July, 2014.

R.P.V. WENDOH

JUDGE

PRESENT:

Mr. Mongeri for the accused persons

Mr. Chrichir for the State

Kennedy – Court Assistant