



IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO. 76 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

DAVID MAINA NJOROGE.....ACCUSED

RULING

The accused, David Maina Njoroge, is charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. He is alleged to have murdered Gideon Wamaria Njenga on 8/3/2011, at Ole Sankale Trading Centre in Narok County. He denied the offence. The prosecution has called a total of six witnesses and closed its case. At the close of the prosecution case, the issue is whether the prosecution has made out a prima facie case to warrant the accused to be placed on his defence.

The only witness who gave evidence that could link the accused with the offence of murder PW1, James Ndirangu who told the court that he used to work with the accused in the same company where they would collect potatoes from farms and sew up the sacks. He recalled that on 8/3/2011, he was working in a farm at Ole sankalo with the accused and he borrowed the accused's knife on the morning of 8/3/2011 to help in sewing the sacks. He used it till 9.00 p.m. and went home which was near Sankale Camp. He slept and at about 11.00 p.m., the accused knocked on his door and asked for his knife which he took and left. Next day, PW1 went to work as usual. On 10/3/2011, he was picked up and informed that the knife he had used on 8/3/2011, had caused a death. He denied that the knife he had used was the one shown to him in court but that it had been a dagger. He said that in the vehicle to the police station, he saw the knife he had used on 8/3/2011 but it was not before court.

PW2, Jeremiah Ndungi Njenga, was a brother of the deceased. He went to Sankale on 10/3/2011, when he learnt that his brother the deceased had not been seen for 3 days. He was informed to go find out from the bar where people had fought. He went to a bar called Ann and in the nearby bushes they found the body in a thicket about 10 metres from the road with a torch, fork jembe in accused's hands and a knife beside the road and a sheath at the feet. He described the knife as a big dagger with stripes at the handle. He later identified the body to the doctor who performed the post mortem. He did not see the knife he found at the scene in court.

PW3, Simon Kanyotu, a brother in law of the deceased only identified the body to the doctor before post mortem. PW4, Peter Wamara, a cousin to the deceased only heard of the fight and heard that it is the accused, Joseph Runana and the deceased who fought; that Joseph was arrested.

PW6, PC Philip Ndambuka, received the report of the murder, went to the scene where the body was with

a torch in one hand, a fork jembe in another and a knife and sheath nearby. It is then the deceased's brother told him that the knife belonged to the accused while the fork jembe and torch belonged to the deceased. He said that all the people that had been in the bar with the accused and a lady disappeared; that Joseph Runana was arrested in Naivasha and PW6 went to get him, found him wearing a jacket (PEX.3) which had blood stains. He recorded statements. He took the exhibits to Government Chemist but when they returned the exhibits, they brought a different knife instead.

Having considered the evidence adduced, there is no evidence linking the accused person with the offence. The only evidence that may have linked the accused to the offence is the knife which PW1 saw in the police car, which was said to belong to the accused and which PW6 took to Government Chemist for analysis but for some unknown reason, it mysteriously disappeared. The police station concerned does not seem to have been keen on following it up with the Government Analyst. The evidence of PW2 only relates to the finding of the body and identification for purposes of post mortem and so does that of PW3. PW6 did not tell the court what happened to Joseph Runana who was also arrested as a suspect. PW5, Dr. Ngulungu only performed post mortem on the deceased.

The accused is a prime suspect to the offence because he was mentioned as having been at the bar where the fight took place on the night the deceased disappeared but no witness came up to identify him. Secondly, the knife allegedly found at the scene was said to belong to accused but the knife mysteriously went missing from the Government Analyst. Suspicion alone, however strong, cannot be a basis for a conviction. In criminal cases, the burden of proof is beyond any reasonable doubt. The prosecution have not established a prima facie case against the accused to warrant him to be called upon to defend himself. He is therefore acquitted under **Section 306** of the **Criminal Procedure Code**.

DATED and DELIVERED this 2nd day of October, 2014.

R.P.V. WENDOH

JUDGE

PRESENT:

Mr. Chirchir for the State

Ms Nasimiyu for the accused

Accused - present

Kennedy – Court Assistant