



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CRIMINAL CASE NO. 53 OF 2010

REPUBLIC.....STATE COUNSEL

VERSUS

ROBERT MUNENE NCHEBERE.....ACCUSED

RULING

1. The accused Robert Munene Nchebere is charged with murder contrary to section 203 of the Penal Code. The particulars of the offense are:-

on the 14th day of June, 2010 at Akirangondu location in Igembe North District within Eastern Province jointly with others not before court unlawfully murdered Isaac Ngolua.

2. The prosecution called 8 witnesses. Of these only one was at the scene where the deceased meet his death. That was PW3. His evidence was that he received a call informing him that his nephew had been beaten at Getuine market.

3. PW3 proceeded to Getuine and found deceased still alive but surrounded by a mob. PW3 said that he feared to go near the deceased but he noted people disperse when he arrived at the scene. He said deceased had a big wound on the head.

4. PW3 testified that he left the scene to look for a taxi to carry the deceased to hospital as he could not be carried by a motor cycle. By the time he returned to the scene he found deceased had been lynched by a mob.

5. The only evidence against the accused is that of PW3. PW3 testified that he saw a crowd of people and in that crowd; he recognized the accused as a person he used to see. PW3 testified that the accused had a knife and that he saw him cut the deceased on the head, mouth and leg.

6. The post mortem report shows that the deceased died as a result of hemorrhage due to a deep cut through the zygomatic bone (check bone) and extensive burns covering 98% of total body service.

7. The prosecution has the onus to establish a prima facie case against the accused. The evidence should be cogent and reliable. It must establish that the accused committed murder jointly with others not in court.

8. PW3 did not strike the court as a reliable witness. In his evidence in chief he said he went to the scene where he found the deceased under attack by a crowd. He said the crowd dispersed before he reached the

place the deceased was.

9. PW3 testified that he decided to go for a vehicle to carry the deceased to hospital. PW3 testified that by the time he returned with the vehicle, the crowd had already lynched the deceased.

10. Towards the end of his evidence in chief, PW3 testified that he was able to recognize five people in the crowd which attacked the deceased. He identified the accused as among them.

11. In cross-examination PW3 seemed to make an about turn in his evidence. He said he saw the accused cutting the deceased with a panga on the head, leg and mouth. Asked when he recognized the accused, PW3 stated that he recognized him the time he went to the scene the first time. He said he also recognized four others.

12. The evidence of PW3 was inconsistent in itself. At the initial stage of his testimony, PW3 said that the crowd which was large dispersed before he neared the deceased. If the crowd dispersed, it is not clearly demonstrated that PW3 saw the faces of those who attacked the deceased. PW3 was clear the crowd dispersed away from, not towards him. It follows that this witness would not have witnessed the attack on the deceased. Dispersing and attacking are two different things.

13. The statement PW3 wrote with the police was read. That statement indicated that PW3 saw five people cutting a person who was lying on the ground. The statement goes further to show that by the time PW3 returned with transport, the deceased had already been lynched.

14. PW3 was not a reliable witness. The way to treat evidence of an unreliable witness is to require corroboration by his evidence. That was the holding in the Court of Appeal case of NDUNGU KIMANYI –V- REPUBLIC [1979] KLR 283, MADAN, MILLER and POTTER JJA where court held:

“The witness in a criminal case upon whose evidence it is proposed to rely should not create an impression in the mind of the court that he is not a straightforward person, or raise a suspicion about his trustworthiness, or do (or say) something which indicates that he is a person of doubtful integrity, and therefore an unreliable witness which makes it unsafe to accept his evidence.”

15. I find no other evidence which adduces cogent evidence tending to implicate the accused with this offence. Consequently the prosecution failed to establish a prima facie case against the accused. Consequently I give accused the benefit of doubt and acquit him of the offence of murder under section 322 of the Criminal Procedure Code.

DATED AT MERU THIS 3RD DAY OF OCTOBER, 2014

LESIIT, J.

JUDGE