KENYA LAW
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REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CRIMINAL CASE NO. 16 OF 2018

REPUBLIC

VERSUS

SAMUEL NGUNJIRI WAIHENYA alias NJIRI......................................ACCUSED

RULING

1. The accused was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code; he was accused of having murdered Michael Githinji Wanjama on the night of 1st and 2nd January, 2015 at Kiahugu Trading Centre in Mukuruweini Sub-County of Nyeri County;

2. On the 29th November, 2018 the accused entered a plea of Not Guilty; and the hearing of the matter commenced on the 11/02/2019; at the hearing hereof the accused was at all times represented by Learned Counsel Miss Maina whereas Ms. Gicheha was the Prosecuting Counsel for the State;

3. The prosecution called a total of six (6) witnesses in support of its case; at the close of the prosecution case defence counsel was invited to make submissions as to whether the prosecution had made out a case that required the accused person to be called upon to defend himself;

4. Counsel for the accused submitted that it was trite law that for the offence of murder the prosecution had to prove two (2) main ingredients of the offence to the required standard; the two ingredients are (i) *actus reus* and (ii) *mens rea*;

5. **On *actus reus*;** counsel submitted that the only evidence that linked the accused to the commission of the crime was an alleged confession by a co-accused whose statement ought to be scrutinized with great caution and needs corroboration; the statement was also not produced in court as evidence; and this key ingredient was not proved to the desired threshold;

6. **On *mens rea*;** The Investigating Officer CPL.Josephat Mbulu (**PW6**) had alluded to a commotion that night between the deceased and Purity the co-accused to the accused herein; but none of the prosecution witnesses gave any concrete evidence on whether the deceased and the accused had ever met; nor was there any evidence adduced that the deceased provoked the accused in a way that would result in his death; that the accused did not have malice aforethought to kill the deceased as he had no reason to;

7. Counsel urged the court to acquit the accused as there was no credible or compelling evidence that the court could use to convict the accused;

8. Case law relied on Court of Appeal case of **Ngala Chirongo Mwamee vs Republic [2018] eKLR.**

9. In response Prosecuting Counsel for the State relied on the evidence adduced by the prosecution witnesses;

10. After hearing the oral submissions made by counsel for accused and having evaluated all the evidence on record; it is this court's finding that the prosecution evidence adduced by Jonathan Mutisya Muasya (**PW2**) a boda-boda rider placed the accused at the scene of the crime on the material date; the evidence of **PW6** who was the investigating officer was that the accused fled the jurisdiction and was arrested four (4) years after the incident took place; this evidence adduced by these two prosecution witnesses raises a scintilla of evidence to support a reasonable conclusion that the accused could have been involved in the commission of the offence;

11. This court is satisfied that the prosecution has established a prima facie case against the accused that warrants him being placed on his defence to answer to the charges; refer to the renowned case of **Bhatt vs Republic (1957)**;

12. The accused is found to have a case to answer; his rights and options will be put to him for election before he presents his defence.

Orders Accordingly.

Dated, Signed and Delivered at Nyeri this 25th day of June, 2020.

HON. A. MSHILA

JUDGE