



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**(CORAM: CHERERE-J)**

**CRIMINAL CASE (MURDER) NO. 62 OF 2019**

**BETWEEN**

**REPUBLIC.....PROSECUTOR**

**AND**

**JADIEL KABERIA.....ACCUSED**

**RULING**

1) **JADIEL KABERIA (Accused)** is charged with the offence of Murder Contrary to **Section 203** as read with **Section 204** of the Penal Code. The particulars of the charge are that

**On diverse dates between 27<sup>th</sup> and 28<sup>th</sup> June, 2019 at an unknown time at Kiegoi Location, in Igembe South Sub-County within Meru County, unlawfully murdered Kianga M'Atheru**

2) Accused is son of **Kianga M'Atheru** (deceased) and PW1 Eunice Nkatha.

3) The prosecution case was that prior to the death of the deceased, Accused and his father had been having disagreements to a point where Accused had severally made threats to kill his father.

4) That Accused had made threats to kill his father was the thread that ran through the evidence by his mother PW1 Eunice Nkatha, neighbour PW2 Geoffrey Kunja, a police officer PW3 PC Naomi Syokau and brother in law PW5 Joel Kalemi.

5) It therefore follows that when Accused father's body was discovered on 28<sup>th</sup> June, 2019, Accused was on the basis of threats allegedly made to the deceased arrested and charged.

6) There is no doubt that the deceased died. The postmortem form, **PEXH. 1**, shows that deceased died of cardiopulmonary arrest due to severe heavy head injury with internal haemorrhage.

7) None of the prosecution witnesses stated that accused person committed the unlawful act that caused the death of the deceased.

8) The issue for determination is whether on the basis of threats allegedly made by the Accused, the Prosecution has established a prima facie case upon which Accused can safely be called upon to defend himself.

9) The totality of the prosecution wholly relied on the intent that Accused had made and no other investigation was carried out to link Accused to the death of his father.

10) At best, the evidence led by the prosecution only amounts to suspicion. In the case of **Sawe vs. Republic [2003] KLR 354** the Court of Appeal held:

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

11) In the absence of any other evidence pointing an accusing finger at the Accused, I am not persuaded that there is sufficient evidence to

warrant this Court to put the Accused on his defence because the evidence on record is such that it cannot sustain a conviction even in the event that Accused is placed on his defence and he elects to exercise his Constitutional right to remain silent under Article 50 (2) (1) of the Constitution.

12) Consequently, under the Provisions of Section 306 (1) of the Criminal Procedure Code, Accused is hereby found **NOT GUILTY**.

**DATED AT MERU THIS 20TH DAY OF MAY 2021.**

**T. W. CHERERE**

**JUDGE**

**Court Assistant - Kinoti**

**Accused - Present**

**For the Accused - Mr. Muriira Advocate**

**For the State - Ms. Mbithe**