



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**CRIMINAL CASE NO. 68 OF 2013**

REPUBLIC .....STATE

VERSUS

BENARD NDIRANGU GACHIE.....ACCUSED

**RULING**

The accused **BERNARD NDIRANGU GACHIE** faces a charge of **MURDER CONTRARY TO SECTION 203 as read with SECTION 204 OF THE PENAL CODE**. The particulars of the charge were that

***“On the 13<sup>th</sup> day of July, 2013 at Nyathuna Village in Bahati in Nakuru North District within Nakuru County murdered SAMUEL, KIBORO NJOROGE alias MBUGUA”***

The accused pleaded ‘**Not Guilty**’ to the charge and his trial commenced before the High Court at Nakuru on 5/3/2015. The prosecution called a total of five (5) witnesses in support of their case.

**PW4 PHARES KAIRU NJENGA** told the court that the deceased was his cousin. On the material day the deceased came to his house to pay money for their group “**chama**”. The deceased then left promising to return to take supper in the house of the witness. However the deceased did not return that day. **PW4** sent a child to call the deceased. The child found that the house of the deceased was locked and the radio was on.

Two days later **PW4** decided to search for the deceased. He went to his house and found the radio was still on. **PW4** smelt a bad odour emanating from the house. He peeped inside the window and saw the deceased half lying on his bed with his head on the floor.

Police were called and they came and broke down the door. The body of deceased was found with a cloth stuffed into the mouth and severe wounds on the head region. Police removed the body to the mortuary and commenced investigations into the matter. The accused was eventually arrested and charged with the murder of the deceased.

The prosecution having closed its case this court must now analyze the evidence on record with a view to determining whether a prima facie case has been established sufficient to warrant placing the accused onto his defence. The definition of a prima facie case was given in the case of **RAMANLAL T. BHATT Vs REPUBLIC [1957] E.A 332**. In that case the court held that

***“It may not be easy to define what is meant by a ‘prima facie’ case but at least it must mean one***

***on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence”***

In this case the prosecution has satisfactorily proved the fact as well as the cause of the deceased’s death.

**PW2 SAMMY MBUGUA NJENGA** and **PW4 PHARES NJENGA** both relatives to the deceased testify that the body of their kin was found lying dead inside his house. **PW1 MARTIN NJOROGE** the deceased’s father told the court that he went to the mortuary where he identified the body for purposes of the autopsy. All the three witnesses who knew the deceased very well identify him as ‘**Samuel Kiboro Njoroge**’

Evidence regarding the cause of death was tendered by **PW2 DR. DANIEL WAINAINA** who performed the autopsy on the body of the deceased. **PW2** stated that the deceased’s skull had been shattered by a blunt object. He formed the opinion that the cause of death was “**head injury with fragmented skull fracture due to brain damage**” **PW2** filled and signed the post-mortem report which is produced in court as an exhibit **P.exb 1**.

Having proved the fact and cause of death the prosecution must go further and tender evidence to prove that it was the accused who by an unlawful act or omission caused that death. There was no witness who saw how the deceased met his unfortunate end. **PW1** and **PW3** were only called to the scene **after** the death had occurred.

**PW4** testified that he had seen the deceased (on a date he does not recall) approximately two days before the body was recovered. The evidence is that the body was found inside the deceased’s own house with the door locked and the radio blaring.

None of the prosecution witnesses knew the accused at all. No witness saw the deceased in the company of the accused. No witness was able to place the accused at the scene.

**PW4** told the court that he later learnt that the deceased lived with a friend. He had no idea who that friend was and he is unable to identify the accused as the man who shared a home with the deceased.

The investigating officer was not called to testify to explain why he arrested and charged the accused. There is not an iota of evidence to link the accused to the deceased, much less to implicate the accused in the murder of the deceased. Should the accused elect to keep silent in his defence, then the evidence on record could not sustain a conviction.

The onus is on the prosecution to prove the guilt of the accused. They have failed miserably to do so. There is nothing to link the accused to this offence. No prima facie case has been established. I enter a verdict of ‘**Not Guilty**’ and I acquit the accused of this charge of murder. The accused is to be set at liberty forthwith unless he is otherwise lawfully held.

**Dated in Nakuru this 24<sup>th</sup> day of February 2017.**

Mr. Njogu for accused

Mr. Chigiti for State

**Maureen A. Odero**

**Judge**