



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**CRIMINAL CASE NO. 16 OF 2012**

REPUBLIC.....RESPONDENT

VERSUS

SIMON MBURU KABIRO.....ACCUSED

**RULING**

The accused **SIMON MBURU** faces a charge of **MURDER CONTRARY TO SECTION 203 as read with SECTION 204 OF THE PENAL CODE.** The particulars of the prosecution case were that

***“On the 5<sup>th</sup> day of March, 2012 at Nyakinyua Farm Solai in Nakuru County murdered JANE ERUPE .***

The accused pleaded ‘**Not Guilty**’ to the charge. His trial commenced on 18/3/2014 in before **Hon Lady Justice Abigael Mshila** who heard the first two (2) witnesses. Following the transfer of the Hon Judge to Nyeri High Court, I took over the case and heard the remaining witnesses. A total of three (3) witnesses testified in this case.

**PW1 DR. TITUS NGULUNGU** was the pathologist who conducted the autopsy on the body of the deceased. His evidence was that he noted multiple bruises and fractures on the body of the deceased. **PW1** concluded after his examination that the cause of death was **“Head and musculo-skeletal injuries with hemorrhage attended by skull and brain contusions and leg fractures with hemorrhage due to multiple blunt trauma in keeping with no homicide”.**

Following the murder of the deceased the accused who was her husband was arrested and charged with having caused her death.

**PW2 JAMES NJAU MUTURI** told the court that he was a neighbor to the accused and his wife. On the night before the body of the deceased was recovered **PW2** stated that he heard some screaming.

**PW3 PETER NJUGUNA MWAURA** was a brother to the accused. All he told the court was on 5/3/2012he drove the accused to Kamukunji area on his motor bike.

At the close of the prosecution case of the prosecution case this court must make a determination as to whether the prosecution have established a prima facie case to warrant the accused being placed onto his defence.

Both the fact as well as the cause of death of the deceased have been proved.**PW1** the doctor gave a clear

account of his post-mortem examination on the body of the deceased. Several severe injuries were seen on the body. Indeed the doctor's testimony by gives the impression that the deceased endured a severe and very brutal attack causing fractures to her legs and head.

There is however no evidence to link the accused to the brutal attack on the deceased who was his wife. **PW2** told the court that on the night of 5/3/2012 he heard screams within the plot. **PW2** however did not go out of his house to check who was screaming or why. Under cross-examination **PW2** admitted that

***“I don't know where the screams were coming from. I don't know who was screaming I don't know who killed the deceased. I don't know how she died.”***

Thus the evidence of **PW2** is of no assistance to the court as he is not able to shed any light on events leading up to the death of the deceased.

Similarly **PW3** has no evidence to offer regarding how the deceased met her death. In short there is no evidence linking the accused to the murder of the deceased. The mere fact that the accused was the husband of the deceased is not sufficient to implicate him.

I find that the prosecution has failed to establish a *prima facie* case and it would be pointless to put the accused onto his defence. Accordingly I enter a record of '**Not Guilty**' and I acquit the charge of murder.

The accused is to be set at liberty forth with unless he is otherwise lawfully held.

**Dated and Delivered in Nakuru this 24<sup>th</sup> day of April 2017.**

Mr Obutu holding brief

Mr Mwende for DPP

**Maureen A. Odero**

**Judge**