



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**CRIMINAL CASE NO. 75 OF 2012**

REPUBLIC.....PROSECUTOR

VERSUS

PATRICK MUGENDI.....1<sup>ST</sup> ACCUSED

ANTHON MWANGI MAINA.....2<sup>ND</sup> ACCUSED

NICHOLAS KARIUKI.....3<sup>RD</sup> ACCUSED

**RULING**

The three accused persons, namely **Patrick Mugendi, Anthony Mwangi Maina** and **Nicholas Kariuki** (Accused 1-3) are charged with the offence of murder contrary to **Section 203 as read with Section 204 of the Penal Code**. The three are alleged to have jointly murdered **Lucy Kairuthi** on the night of 9/10/2013 at Shauri Yako in Mutuati Market.

The prosecution called a total of two witnesses and closed its case. The prosecution was led by Learned Counsel, Mr. Mulochi while the accused was represented by Learned Counsel, Mr. Kaumbi.

At this stage, the court has to determine whether or not the prosecution has established a prima facie against accused to warrant the accused defend themselves. A prima facie case is said to be one whereby a tribunal properly directing its mind to the law and evidence could convict if no explanation is offered by the defence. See ***Bhatt v Rep 1957 EA 332***. I will therefore consider the evidence adduced before this court to determine whether a prima facie case is made out against accused.

**PW1 Mary Gakii**, is a sister to the deceased. She resides in Marsabit and was only informed that her sister had been burnt in hot water. She found her sister admitted at Maua Methodist Hospital on 12/10/2012 and took her to Kenyatta National Hospital where she died the next day. She went back to Mutuati Police Station on 26/10/2012 to get a letter so that post mortem could be done. She identified the deceased's body to the Doctor for purposes of post mortem. She said that the deceased told her the name of the accused and she first saw them at Maua Police Station.

**PW2 Dr. Benard Midia** performed the post mortem on the deceased on 26/10/2012. He observed that the body sustained burns on the face, neck 5%, whole trunk 36%, left upper limb 9%, right upper limb 5%, left lower limb 18% and right lower limb 9% and in total had 82% surface area 2<sup>nd</sup> degree burns. He was of the opinion that cause of death was complications of 82% total body surface area 2<sup>nd</sup> degree burns. In cross examination, the doctor said that the likely cause of the burns was water.

The prosecution was unable to avail any of the other people who witnessed the incident. PW1 did not witness the incident. She had no idea how it happened. Although PW1 claims to have been told accused's names by the deceased, she did not tell the court what state PW1 found the deceased. The deceased was allegedly injured on 9/10/2012. PW1 said she took deceased to Kenyatta National Hospital on 12/10/2012 and it seems she died on that same day. The court was not told whether the deceased was still able to talk and communicate with PW1 when she escorted her to KNH. Further, PW1 was not even able to tell what role each of the accused played in deceased's death.

This is one case where the police did not take much interest. The police officers who investigated and carried out the arrests could not be traced to testify. The only conclusion that this court arrived at is that the police were either compromised or very lax in the manner in which they handled this case.

In the end, I find that the prosecution did not adduce any evidence linking the accused to the offence. No prima facie case has been made against the accused to warrant them to defend themselves. They are all acquitted under **Section 306 (1) of the CPC.**

**DATED, SIGNED AND DELIVERED THIS 25<sup>TH</sup> DAY OF JULY, 2016.**

**R.P.V. WENDOH**

**JUDGE**

**25/7/2016**

**In the Presence of**

Mr. Mulochi for State

Ms. Nelima Holding Brief for Mr. Kaumbi for Accused

Ibrahim, Court Assistant

All Present, Accused