



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**  
**CRIMINAL CASE NO. 71 OF 2009**  
**REPUBLIC.....PROSECUTOR**

*versus*

**CYRUS MUNYAO MBAATI alias MKOSA NGUVU....ACCUSED**

**RULING**

**1. CYRUS MUNYAO MBAATI alias MKOSA NGUVU hereinafter “the 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 offence were that *on the 19<sup>th</sup> day of August 2004 at Kilala Market of Kibauni Location in Mwala District the accused murdered Kisundu Mutinda hereinafter referred to as the “deceased”.*

2. The case as presented by the prosecution is that on the 19<sup>th</sup> August 2004, PW 1 Mwanzia Kithome, a watchman was guarding properties owned by Muendo Kinai when a lady ran out of the bar alleging that the accused had stabbed the deceased. He entered the bar and found the deceased having sustained a stab wound.

3. PW 2 Mutinda Muoki the father of the deceased got the information from Leki Muendo. PW 3 David Musyoka Kibisia a cousin to the deceased identified his body to the Doctor who performed the autopsy.

PW 5 Stephen Matinde Joel Weitse, a Government Analyst analyzed items submitted to the government chemist and made a report thereof.

PW 6 Dr. John Mutuna produced in evidence a postmortem report in respect of the deceased. PW 4 No.49068 PC Thaddeus Kimweru investigated the case and formed an opinion to charge the accused.

4. In order to require the accused to defend himself evidence adduced by the prosecution must disclose a prima facie case. The celebrated case or **Ramanlal Trambaklal Bhatt v R (1957) E A 332** defined a prima facie case thus:

***“One .... Where a reasonable tribunal properly directing its mind to the law and evidence adduced could convict if no explanation is offered by the defence.”***

5. In this case the fact of death was proved by evidence of the report of the post mortem that was conducted on the body of the deceased. The cause of death was found to be haemorrhagic shock

secondary to assault. There was a penetrating stab wound on the 3<sup>rd</sup> – 4<sup>th</sup> ribs anteriorly in the left chest. This confirmed what witnesses who saw the deceased stated that he was stabbed. The murder weapon was recovered and submitted to the government chemist for analysis. The knife was heavily stained with human blood of group A. The blood sample of the deceased was also found to be of group A.

6. In order for a person to be guilty of murder, he/she must have caused the death of another person by an unlawful act or omission and with malice aforethought. **(See section 203 of the Penal Code).**

Malice aforethought is defined by section 206 of the Penal Code thus:

***“206 Malice aforethought shall be deemed to be established by evidence proving any one or more of the following instances:-***

***a. An intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;***

***b. Knowledge that he act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous harm is cause or not, or by wish that may be caused;***

***c. An intent to commit a felony;***

***d. An intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony;”***

7. Evidence adduced by PW 1 that he was informed by a lady who worked at the bar that the accused stabbed the complainant was not direct evidence. The witness stated that the person died. PW 4 the investigation officer in forming the opinion to charge the accused relied upon evidence of PW 1 and the owner of the hotel who was not called as a witness. The act that caused the death of the deceased was committed inside the bar while PW 1 was outside. It was his evidence that when he entered the bar people had run out. Only the deceased was inside and already injured. PW 1 having not witnessed the incident, at the close of the prosecution’s case there no evidence to establish that the unlawful act that caused the death of the deceased was committed by the accused. This being the case, no prima facie case has been established requiring him to be put on his defence.

8. In the premises the accused is not guilty and is hereby acquitted under section 306(1) of the Criminal Procedure Code.

9. The accused shall be released forthwith unless otherwise lawfully held.

10. It is so ordered.

**DATED, SIGNED and DELIVERED at MACHAKOS this 27<sup>TH</sup> day of MAY 2015.**

**L.N. MUTENDE**

**JUDGE**