

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO. 10 OF 2012

REPUBLICPROSECUTOR

VERSUS

JOSEPH MMBAYAACCUSED

RULING

1. When **JOSEPH MMBAYA** was charged with the murder of **CHRISPINUS SHIAMBETSA** on 21/03/2012, he denied the charge. The charge was presented as follows:-

“MURDER CONTRARY TO SECTION 203 AS READ WITH SECTION 204 OF THE PENAL CODE.

JOSEPH MMBAYA:- On the night between 4th and 5th day of March, 2012 at LUNUNU village, SHISWA sub-location, MURHANDA location in KAKAMEGA EAST District within WESTERN Province murdered CHRISPINUS SHIAMBETSA.”

2. Two witnesses testified in this case. **PW1** was the Father to the deceased. He was called **TOM MBOYA SHIAMBETSA**. He however confirmed that he only learnt of his son’s death long after his son had died and that he was told that the Accused person herein is the one who had killed his son.

3. **PW2** was the deceased’s brother one **BENSON IMBALI**. He testified that in the morning of 05/03/2012 he heard the deceased’s wife crying outside his house. He then realized that the cries were from his neighbour’s compound. He hurriedly went out and found his way into the deceased’s house by kicking the front door which had been locked from inside. He found the deceased’s children crying. He then found his brother’s body lying dead having been cut right through the middle of the head.

4. **PW2** further testified that in the evening of the preceding day, he had heard the deceased’s wife quarrelling with the deceased that the deceased had an extra-marital affair with the Accused person’s wife. Come the following morning, the deceased was found dead. **PW2** however did not witness how his brother met his death.

5. Although the other witnesses did not testify and there is no direct evidence on the Accused person’s involvement in the deceased’s death, there is however some iota of circumstantial evidence to that effect. I will not at this point give the Accused person the benefit of doubt but instead place him on his defence. He has a case to answer.

Orders accordingly.

DELIVERED, DATED and SIGNED at KAKAMEGA this 28th day of July, 2015

A. C. MRIMA

JUDGE