



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**CRIMINAL (MURDER) CASE NO. 27 OF 2012**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**DAN CLAUS MURUNGA.....ACCUSED**

**RULING**

1.This ruling is to determine whether or not the accused person herein, Dan Claus Murunga has a case to answer. The accused person was arraigned before this court on 26<sup>th</sup> May, 2012 on one count of Murder contrary to Section 203 as read with Section 204 of the penal code. The particulars of the offence are that on the 22<sup>nd</sup> day of June, 2012 at Shirere Sub-Location, Bukhungu Location, Kakamega Township in Kakamega Central District within Western Province, murdered CHARLES KUBAI. The accused pleaded not guilty to the charge.

2. The prosecution called 6 witnesses among them Evans Obiero Shivego who testified as PW1. He told the Court that on 22<sup>nd</sup> July, 2012 at about 3.00pm, while he was at the deceased's house within Kakamega town the accused also came there. The deceased was seated. Then the accused started attacking the deceased, using his fists. The accused then left but came back a second time armed with a panga hidden in his clothes. The accused removed the panga and cut the deceased on the hand before running away. As the accused fled, he was arrested by some touts. The deceased was taken to Kakamega PGH where he was admitted, but he died during the night as he was undergoing treatment.

3. Other prosecution witnesses were Imonje Kubai, PW2 and Morris Luteshi PW3. Pw2 and Pw3 are son and brother respectively of the deceased. They only came to know of the deceased's death after the event. PW3 told the court that the accused and the deceased used to live together in Kakamega town.

4.PW4 was Dr.Dixon Mchana. He conducted the post mortem examination on the body of the deceased on 25<sup>th</sup> July, 2012. He testified that externally, the deceased's body had a deep cut wound on the left arm outer aspect. The wound had been stitched. The wound was 13cm long and 5 cm deep. The cut had severed the blood vessels. Internally, there were 3 fractured ribs on the right lung, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> ribs, with minor bleeding into the right chest. In Dr. Mchana's opinion the cause of death was severe blood loss secondary to cut wound following an assault. The post mortem report was produced as PExhibit 1.

5. PW5 Mohammed Mzee Juma testified that on 22<sup>nd</sup> July, 2012 he was at Sigalagala area outside the mosque when he heard the accused demanding cows from the deceased at the deceased's homestead. That he also heard the deceased telling the accused to take the cows if he (accused)

believed the cows were his. PW5 also testified that he saw the accused struggling with the deceased who was popularly known as Muhya. PW5 also stated that he saw the accused whom he referred to as Dan remove a panga and hit the deceased on the left hand. After the attack, the accused started fleeing but he was chased, arrested and handed over to police. PW5 helped to take the deceased to hospital and signed the papers for the deceased to be taken to theatre. During cross examination, pw5 denied a suggestion by the defence that it was the deceased who had a panga.

6. Pw6 was number 8638 Cpl Phoebe Oluoch of Kakamega Police Station performing general investigation duties. On receiving instructions her OCS she and other Police officers proceeded to the scene at about 4.00pm on the material day. On arrival they found the deceased bleeding profusely. Both deceased and accused were rushed to Kakamega PGH for treatment since the accused also had multiple injuries on the face, feet and lower leg. Pw6 testified that during the ensuring investigations, she was not able to establish who had inflicted the injuries on the deceased but she stated that she established that there had been a quarrel between the accused and the deceased who were son and father. There were no submissions at the close of the Prosecution case.

7. I have now carefully gone through the evidence set out above and I am satisfied that the prosecution has established a prima facie case to warrant the accused being put on his defence. At this stage it is not a requirement for the prosecution to prove their case beyond any reasonable doubt. They only need to show that on the face of it, the evidence on record is such that the accused needs to make an answer. I therefore find that the accused person herein has a case to answer.

8. In doing so the accused may give sworn or unsworn evidence. He may also choose to remain silent and let the court decide the case on the evidence that is before it. In each case the accused person has a right to call witnesses.

If the accused chooses to give sworn evidence, he will be asked questions by the prosecution and the court. However, if the accused chooses to give unsworn testimony, no questions will be put to him, either by the Prosecution or the Court.

I now call upon the accused person to indicate to the court how he proposes to proceed with his defence.

Orders accordingly.

Ruling delivered dated and signed in open Court at Kakamega this 29th day of September 2015

**RUTH N. SITATI**

**JUDGE**

In the presence of

Mr. Omwenga (present) for The State

Mr. Ondieki h/b for Mrs Muleshe for Accused

Mr. Solomon Lagat Court Assistant