



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITUI**

**CRIMINAL CASE NO. 69 OF 2015**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**ELIJAH MAKUNYI KIRUGI .....ACCUSED**

**R U L I N G**

1. **Elijah Makunyi Kirugi** hereinafter “the accused” is charged with the offence of **Murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**. Particulars of the offence are that on the **9<sup>th</sup>** day of **February, 2010**, at **Mukuruni Village, Kanthungu Location** in **Mumoni District** within **Eastern Province** murdered **John Kithome Kirugi** (deceased).
2. The case as presented by the Prosecution is that the deceased left home going to check on the representatives of **Benda Industry**, a company that was purchasing some copper stones that the deceased and his brothers, the accused inclusive were selling. The purchasers gathered but the accused and another were armed with weapons. Prior to PW2 **John Njoroge Ikanda**, the representative of the company, agreeing to buy the stones the three brothers present discussed and agreed. The weight of the stones that had been excavated was given and the accused disappeared. The sum of money was paid to the deceased. All over a sudden the accused returned armed with a panga. He sought to know who had been paid the money. On learning that it was the deceased he told the buyers to go and call the police. Then he acted by cutting the deceased several times with the panga. People scampered into nearby bushes.
3. The following morning the police visited the scene and took the body to the mortuary. An autopsy performed on the body of the deceased revealed that the cause of death was cardiopulmonary arrest secondary to severe haemorrhage due to multiple cut wounds. This was proof of the fact of death. There is *prima facie* evidence pointing at the accused as the person who caused the act that resulted into the death of the deceased.
4. This therefore requires him to adduce evidence in his defence. Consequently he is required to address the court pursuant to the provisions of **Section 306 (2)** of the **Criminal Procedure Code**.
5. It is so ordered.

**Dated and Signed at Kitui this 21<sup>st</sup> day of October, 2015**

**L. N. MUTENDE**

**JUDGE**