



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

HIGH COURT CRIMINAL CASE NO 67 OF 2009

REPUBLIC.....PROSECUTOR

VERSUS

PETER IVITA MAITHYA.....ACCUSED

RULING

1. **PETER IVITA MAITHYA**, 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 between the 22nd day of November, 2009 and 23rd day of November, 2009 at **Muthauta Village, Muthauta Sub-location in Masinga District** within the **Eastern Province, Murdered Brian Maithya Mutiso – (Deceased)**.
2. This is a case where the body of the deceased was found floating in **Yenguni River** by members of the public.
3. To prove the case the prosecution called **five (5)** witnesses. **PW1 No.93138 P.C. Dalmas Ekiru** received a report about a body that was spotted in the **Yenguni River**. He visited the Scene in company of **Corporal Komol** and **AP Corporal Kosgey**. They found the body that they retrieved. They took the body to **Matuu District Hospital Mortuary**.
4. **PW2 Urbanus Nzau Mutisya Mwaniki**, a stepbrother of the deceased identified the body to the doctor who performed the postmortem.
5. **PW3 Richard Musyoka**, a son of the deceased learnt of his disappearance on the **7th day of December, 2009**. He later found his body in the mortuary.
6. **PW4 Dr. Geoffrey Mutunga** performed a postmortem on the body of the deceased. He found the body already decomposed. According to his findings there was a fracture of the thyroid cartilage and thyroid bones. There were also features of manual strangulation. He formed an opinion that the cause of death was **asphyxiation** due to **manual strangulation**.
7. **PW5 No.77097 P.C. Abdalla Kongani** went to rescue the accused who was about to be lynched following allegations that he had killed his father.

On cross examination he stated that he was implicated by his sister who is now deceased.

8. At the close of the prosecution’s case there was absolutely no evidence linking the accused to the death of the deceased. He was allegedly arrested on suspicion. As correctly submitted by Counsel for the accused, in the case of **Sawe v The Republic (2003) eKLR** the **Court of Appeal** held that:

“Suspicion, however strong cannot provide the basis of inferring guilty which must be proved by evidence beyond reasonable doubt”.

9. Consequently, there is no evidence to suggest that the accused caused the death of the deceased

and therefore he is acquitted pursuant to the provisions of **Section 306(1) of the Criminal Procedure Code.**
10. It is so ordered

DATED and SIGNED at KITUI

L.N. MUTENDE

JUDGE

DELIVERED at MACHAKOS this 21st of October, 2015.

P. NYAMWEYA

JUDGE