



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 77 OF 2013**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**DAVID MWANGI MUNGAI.....1<sup>ST</sup> ACCUSED**

**BEATRICE NYAGAKI MUNGAI.....2<sup>ND</sup> ACCUSED**

**RULING**

Both accused persons, David Mwangi Mungai and Beatrice Nyagaki Mungai, are jointly charged with the murder of Patrick Muiga Gathimba contrary to section 203 as read with section 204 of the Penal Code. The offence is alleged to have been committed on 20<sup>th</sup> June 2013 at Ndenderu Village within Kiambu County. Each accused person has denied the offence.

I took over the conduct of this case after evidence of five (5) prosecution witnesses had taken by Hon. Lady Justice Florence Muchemi. The former judge ceased to have jurisdiction in this matter upon her transfer. I took evidence of three (3) prosecution witnesses.

I have considered the evidence in support of the prosecution case. It alleges that the deceased was assaulted by the two accused persons before the court on 20<sup>th</sup> June 2013 and sustained injuries on the head and the pelvic region. He was hospitalized but died on 26<sup>th</sup> June 2013, six days later, while undergoing treatment. The cause of death has been confirmed as severe head injury due to blunt force head trauma due to assault.

The evidence of Lucy Wahu (PW5) a neighbour of the accused persons shows that on 20<sup>th</sup> June 2013 she heard shouts in Kikuyu language coming from the compound of the two accused persons who lived 20 – 30 metres from PW5’s home to the effect that **“What have you come to steal from my compound”**. PW5 went outside her house and saw the 1<sup>st</sup> accused hitting the deceased with a piece of firewood while the 2<sup>nd</sup> accused was holding the deceased. PW5 knew the two accused persons and the deceased.

I have also considered the evidence of the other prosecution witnesses. The injuries were caused by a blunt object and the opinion of the doctor is that the cause of death was due to head injuries. This evidence agrees with that of the other witnesses especially PW2 and PW3 that the deceased had a head injury.

At this stage of the trial it is my finding that the evidence on record implicates the two accused persons. I find that the evidence establishes a prima facie case against the accused persons and I will, which I hereby do, put them on their defence. Consequently, I hereby inform them of their rights under section 306 (2) Criminal Procedure Code to inform this court the manner in which they intend to adduce evidence in their defence and whether they wish to call any witnesses in support of their defence. Orders shall issue accordingly.

**Dated, signed and delivered this 7<sup>th</sup> December 2015.**

**S. N. MUTUKU**

**JUDGE**

**In the presence of:**

Ms Florence Ikol for the prosecution

Mr. Wamwayi for the 1<sup>st</sup> accused

Mr. Jumba for the 2<sup>nd</sup> accused

Mr. David Mwangi Mungai and Ms Beatrice Nyagake Mungai, accused persons

Mr. Daniel Ngumbi, court clerk