



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL APPEAL NO. 96 OF 2009

LESIIT, J

REPUBLIC.....PROSECUTOR

V E R S U S

ALFAMA MUKAMI NJAGI.....1ST ACCUSED.

JOHN MWITI MUCHEEKE.....2ND ACCUSED.

RULING

1. The First Accused **ALFAMA MUKAMI NJAGI** and the second accused John Mwiti Muccheke, are jointly charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on the 25th day of November 2009 at Nguruki Market Iruma Sub location in Maara District within Eastern Province jointly with another murdered Lawrence Murithi.
2. The prosecution called only two witnesses, the mother and father of the deceased as PW1 and 2 respectively.
3. The evidence of both prosecution witnesses was similar. They testified that on the 25th November 2009, at around midnight both were asleep in their home when they were woken up by one Kithinji and one Rena. The two witnesses testified that they were informed that their son Lawrence Muriithi had been stabbed.
4. PW1 and 2 stated that they accompanied the one who brought them the sad news to a place called Nguruki. There they found the dead body of the deceased with a stab wound on the chest. The two then reported to the Chief and then to the police.
5. No other evidence was adduced by the prosecution in this case. There is no evidence to show how the deceased met his death. There is no evidence to show why the accused persons were arrested or how they are involved in the death of the deceased.
6. The prosecution has the burden and evidence of proof in this case. It was the duty of the prosecution to adduce evidence to establish that the accused persons with one common intention to cause either death or grievous harm to the accused attacked and inflicted injuries on the deceased as a result of which he died.
7. Apart from the evidence of PW1 and PW2, we have no evidence to show what caused the death of the deceased. The burden is not just to prove death, even though that is important. The burden on the prosecution is to show that the deceased death was not caused by natural causes but through foul play.
8. The Prosecution failed to prove this because no evidence was adduced to show how deceased met

- his death, and secondly no evidence was adduced to show the death was caused by an unlawful act or omission by the accused persons.
9. No evidence was adduced to show the circumstances which led to the accused arrest or how they were connected to deceased death.
 10. Having considered the evidence adduced in this case I find that there is no iota of evidence to establish that the deceased died due to deceased unlawful act or omission, and that the act or omission was executed by both with an intention to either cause death or grievous harm on the deceased or another.
 11. I find that the prosecution has failed to adduce any evidence against the accused that would warrant the court to place the accused persons on their defence. Consequently I give the accused persons the benefit of doubt and acquit them of the offence at this stage under S.306 of the CPC.

DATED SIGNED AND DELIVERED AT MERU THIS 23RD DAY OF SEPTEMBER, 2014.

LESIIT J.

JUDGE