



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**  
**CRIMINAL CASE NO. 44 OF 2007**  
**REPUBLIC**  
**VERSUS**  
**MUTUA SILA.....ACCUSED**

**J U D G M E N T**

1. The Accused, **Mutua Sila**, was charged with the offence of murder contrary to section **203 and 204** of the **Penal Code**.

The particulars of the offence being that on the 27<sup>th</sup> day of July 2007 at around 7.00 p.m. at **Kamumbuni Village, Mulundi Sub-location** in **Kitui District** of the **Eastern Province**, murdered **Boniface Kimanzi**.

2. In support of their case, the prosecution called a total of eight witnesses. The prosecution case is that the Accused and the deceased were at a party where they drunk traditional liquor. A quarrel ensued while they were on their way home at about 7.00 p.m. The Accused and the deceased then started fighting. PW1 **Munywoki Mwaniki** and PW3 **Kimwele Kungu** who were with them tried to intervene. The Accused and the deceased who were exchanging punches fell into a ditch.

3. The deceased who was staggering was escorted by PW1 and the Accused to a nearby home and lay under a tree at the home of PW4 **Maria Mwinzi**. Shortly thereafter it was discovered that the deceased had passed away. The matter was reported to the authorities. The Accused was arrested and after investigations he was charged with the offence herein.

4. In his defence, the Accused denied having caused the death of the deceased. According to the Accused, he was questioned by youth wingers who he informed that he had left the deceased at the party. The Accused stated that he was arrested and remained in police custody for two weeks during which time the police officers tried to extract a bribe of Kshs.20,000/= from him that the Accused failed to raise the said amount and he ended up in court.

5. The evidence of PW1 and PW2 regarding the fight between the Accused and the deceased is corroborative. That evidence is further corroborated by the evidence of PW2 **Annah Kang'waa** who also witnessed the fight.

6. The evidence of the report and the investigations carried out is reflected in the evidence of Assistant Chief, PW5 **Tito Ndung'u** and the Investigation Officer, PW8 **C.I. Anold Etyang**. The postmortem report which was produced by the Investigating Officer without the objections from the defence reflected the cause of death as "CPA 20 INTERNAL ABDOMINAL INJURY DUE TO RUPTURED SPLEEN.

ALSO HEMOTHORAX PRESENT.”

7. The Accused has denied having fought with the deceased. However, from the evidence of the prosecution witnesses analyzed above, I have no doubt that the Accused and the deceased fought and fell into a ditch and the deceased passed away the same evening. It is also clear from the postmortem report that the cause of death was internal injuries. According to the eye witnesses, the Accused and the deceased fought using their fists. Thus the injuries sustained by the deceased could either be due to the punches or due to the fall. However, the Accused does not seem to have premeditated to cause the death of the deceased. Indeed it is not possible to tell who was to blame between the Accused and the deceased for the fight and the resultant death.

8. With the foregoing, I give the Accused the benefit of doubt and acquit him.

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**B. THURANIRA JADEN**

**JUDGE**

**Dated and delivered at Machakos this 30<sup>th</sup> day of October 2014.**

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**B. THURANIRA JADEN**

**JUDGE**