

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 57 OF 2007

REPUBLIC

VERSUS

RICHARD MUTUA SOWE ACCUSED

J U D G M E N T

1. The accused, **Richard Mutua Sowe** is 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 8th day of October 2007 at **Masaku Ndogo village, Masongaleni Location** in **Kibwezi District** within the **Eastern Province** murdered **Yulia Munguti**.

2. The prosecution called eight witnesses in support of their case. From the evidence of the mother to the deceased, PW2 **Anna Munguti**; that of a neighbour, PW1 **Daniel Muthoka** and a co-worker to the accused, PW3 **James Mwendwa Mbathi**, it is clear that the accused was the last person to be seen with the deceased on the material night. That is what led to the arrest of the accused. There was no eye witness. The evidence of the rest of the prosecution witnesses, that is PW4 **Meshack Musomba Muthoka**, PW5 **Kimeu Nzoka**, PW6 **John Munguti Katiku**, PW7 **PC Martin Makau** and PW8 **PC William Muthama** is on the fact of the death of the deceased and the arrest of the accused person.

3. The circumstantial evidence against the accused is weak. There was opportunity for any other person to have murdered the deceased in the course of the night in question. The prosecution failed to secure the attendance of some crucial witnesses and proceeded to close their half-baked case. The confession allegedly recorded from the accused was not produced in court. The postmortem report was also not produced to prove the cause of death.

4. With the foregoing, no *prima facie* case was established against the accused. Consequently, the accused is hereby acquitted under **section 306 (1)** of the **Criminal Procedure Code**.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 30th day of October 2014.

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