



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 29 OF 2008

REPUBLIC .....PROSECUTOR

VERSUS

JAMES MUINDE MUSYOKI.....ACCUSED

RULING

1. **James Muinde Musyoki**, 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 being that on the 1<sup>st</sup> day of **May 2008** at **Kivani Village** of **Kisau Location** in **Makueni District** within **Eastern Province** murdered **Mumbua Mbilo**.
2. He pleaded not guilty to the charge. At close of the prosecution’s case the State had called only two (2) witnesses. **PW1, Muli Ngangi** stated that he was requested by **Muema Nzioka**, his uncle to take his employee **Mumbua Mbilo** to hospital for treatment. **Muema** resided in **Nairobi**, away from home. He found **Mumbua** at home. He took her to the Health Centre as she was experiencing pain. She told him that she had been assaulted but did not divulge the name of her assailant. At the hospital he was advised to obtain a P3 form. He complied. He took her back home. Later he heard she had passed on.
3. **PW2, No. 57653 P.C. Pius Ndeti Mutisya** stated that he received a report from **Mumbua** that she had been attacked by the accused who intended to rape her on the **4<sup>th</sup> May, 2008**. He booked the report and referred her to hospital. He caused the accused to be arrested. Thereafter he learnt of the demise of the deceased.
4. On cross-examination he stated that the deceased did not state what transpired prior to being attacked.
5. The prosecution had a duty of proving beyond any reasonable doubt that the accused herein caused the death of the deceased with malice aforethought. At the close of the prosecution’s case no evidence had been adduced to prove the cause of the death of the deceased.
6. **PW1** who took her to hospital was not told who indeed injured the deceased. After **PW2** received a complaint he did not carry out any investigations to establish if indeed the accused had assaulted the complainant.
7. In the premises there is no evidence as to how the deceased was assaulted if indeed she was assaulted.
8. No evidence was adduced of the cause of death of the deceased. Consequently, there is no proof that the accused caused the death of the deceased.
9. In the result, I find the accused not guilty. Accordingly, he is acquitted under **Section 306(1)** of the **Penal Code**.

**DATED, SIGNED and DELIVERED** at **MACHAKOS** this **24<sup>TH</sup>** day of **OCTOBER, 2014**.

**L.N. MUTENDE**

**JUDGE**