



**REPUBLIC OF KENYA**  
**IN THE HIGHCOURT OF KENYA AT EMBU**

**MURDER CASE NO 37 OF 2010**

**REPUBLIC.....PROSECUTION**

**VERSUS**

**CHELESTINO KAGO NGUKU.....ACCUSED**

**RULING**

The accused person is facing a charge of Murder contrary to section 203 as read with section 204 of the Penal Code. The prosecution called a total of nine witnesses. There is no direct evidence as no one witnessed the murder. The prosecution has relied on circumstantial evidence. PW1 (CHELESTINO NJERU NJUE) stated that after coming from a neighbour's home where he had been drinking he heard a man who he did not see screaming. He added that he had seen the accused hit something which he did not see. The statement of this witness was recorded after several months of the occurrence of this incident.

PW8 Boniface Njoka Kiora testified that on the 5<sup>th</sup> April 2009 he was called by his children at 10 pm. They informed him that they had heard somebody screaming. It was the accused who was screaming and he ran away. He went to the other side of the stream to find out what had happened whereupon he met two ladies who told him not to mention them. He saw a person lying on the road but he did not go near to identify the body nor the clothes the person wore.

(PW7) Samuel Njoroge (C.I) testified that after the report was made on 6/4/09 they proceeded to the scene where they found the partly burnt body of the deceased. Nobody seemed to know what had happened. He further testified that the relatives suspected the accused because of the previous land dispute between him and the deceased. It was also his testimony that he knew nothing about the crime and how it was committed

The evidence of PW2 and PW3 is about what happened on 5/4/09 2pm. They said the accused and deceased had been at their home taking alcohol. They did not tell the court anything about the killing. From my assessment of the evidence, I do find the evidence of the witnesses to be based on speculation and suspicion because of a land dispute between the deceased and the accused. The C.A in the case of **SAWE V R 2003 KLR 364** held thus ***"suspicion, however strong cannot infer the basis of inferring guilt which must be proved by evidence beyond reasonable doubt"***

The speculation and suspicion aside, the evidence of PW1 & PW8 which is purely circumstantial is too weak to lay any basis for proof of a prima facie case for the following reasons:

- (i) PW1, did not identify the person he heard screaming
- (ii) He did not say what he saw the accused hitting if indeed he saw

him.

- (iii) No explanation was given why PW1's statement was recorded four months after the incident.
- (iv) PW8 only heard the accused screaming and running away that night.
- v) PW8 saw the deceased's body on the road and two women he found there warned him not to mention their names why?

After analysing all this evidence I do find that the prosecution has failed to establish a prima facie case against the accused to make me place him on his defence. I find him not guilty and acquit him under Section 306 (1) Criminal Procedure Code. He shall be released unless otherwise lawfully held under a separate warrant.

**DELIVERED, SIGNED AND DATED IN OPEN COURT AT EMBU THIS 18<sup>TH</sup> DAY OF JULY 2013.**

**H.I. ONG'UDI**

**JUDGE**

**In the presence of;**

**M/s Ing'ahizu for State**

**Mrs M. Njuguna for M/s Fatuma for accused**

**Accused**

**Njue – C/c**