



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL CASE NO. 8 OF 2013

REPUBLIC PROSECUTOR

VERSUS

1. ISAAC KALUME KENGA
2. MASAMBUKO KITSAO MASHA .
3. GERALD SAFARI KARISA MBITHAACCUSED

RULING

The three Accused persons above named are charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code.

The particulars are that on the night of 14th and 15th May, 2012 at Mwiri village, Kambe Location within Kilifi County, jointly, with others not before the Court murdered **MOHAMED KITSAO MASHA**.

The prosecution called eight (8) witnesses in this case. The thrust of their evidence is that the relationship between the Deceased and the three Accused persons was strained owing to allegations made by the Accused persons to the effect that the Deceased was a wizard.

According to the evidence of PW 1 who was the Deceased daughter, the incident took place at around 12:45 a.m. On the night in question. She had heard screams emanating from his house and upon checking found him lying dead with cuts wounds on his face. None of the prosecution witnesses testified to have seen the persons who killed the Deceased.

The area chief (PW2) did attempt to conduct investigations in the matter by trying to find out who did not sleep in his house on the night of the murder, who did not attend the funeral of the Deceased. That in itself was not exhaustive. The chief also did testify that threats had been issued on the Deceased by the Accused persons on the allegation that he was a wizard. The threats if any are not conclusive evidence to the charge of murder.

Whereas the motive has been alleged, there is no attempt to prove.

This incident took place in a compound with several homesteads.

The Doctor who conducted the postmortem examination on the body of the Deceased formed the opinion that in a situation as the one surrounding the death of the Deceased none of the family members saw the

attackers that night.

The evidence as adduced in Court is that based on suspicion. Its trite law that suspicion, however, strong cannot form the basis of a conviction.

There is no prima facie case made out against the Accused persons to warrant any of them to be placed on their defence and they are acquitted accordingly under section 306 (1) of the Criminal Procedure Code of the offence of murder contrary to section 203 as read with section 204 of the Criminal Procedure Code. They are set at liberty unless otherwise lawfully held.

Ruling delivered dated and signed this **18th** day of **December, 2013**.

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M. MUYA

JUDGE

18TH DECEMBER, 2013

In the presence of:-

Learned State Counsel Miss Ogweno

Learned Counsel Mr. Mushelle

Court clerk Chepkwony