

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO. 77 OF 2008

REPUBLIC..... PROSECUTOR

VERSUS

FRANCIS GAKURE WANYOIKE.....ACCUSED

RULING

The accused is on trial for the offence of murder. The particulars of the charge are that the accused, **FRANCIS GAKURE WANYOIKE**, murdered **GERALD CHOMBA MACHARIA** between 25th and 30th August 2008. The incident is said to have taken place at Juja Farm in Thika District.

Seven witnesses have testified for the prosecution. Three of those witnesses testified that they saw the accused assaulting the deceased.

When the pathologist conducted a post-mortem examination on the body of the deceased, he ascertained that the cause of death was intestinal obstruction and intestinal perforation due to a strangulated right inguinal hernia.

The pathologist explained that an assault to the stomach of the deceased could have caused the perforation of the intestine.

As the accused is said to have assaulted the deceased on the stomach, amongst other parts of his body, that would suggest that the accused may be accountable for the consequences of that assault, unless he can extricate himself from that responsibility.

In other words, it does appear that the accused may be convicted on the strength of the evidence already tendered unless his defence casts some doubt on the prima facie case which the prosecution has already advanced.

Accordingly, I do find that the accused has a case to answer.

Dated, Signed and Delivered at Nairobi, this 22nd day of February, 2012.

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FRED A. OCHIENG
JUDGE