



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**  
**CRIMINAL CASE NO. 48 OF 2008**

**ROBER MUNGAI MAINA..... ACCUSED**  
**VERSUS**  
**REPUBLIC..... PROSECUTOR**

**RULING**

**Robert Mungai Maina**, the accused person herein, is before this Court on the information of the Honourable Attorney General dated 9<sup>th</sup> September 2008, to face a charge of murder contrary to *Section 203* as read with *Section 204* of the Penal Code. The particulars of the offence are that on 27<sup>th</sup> day of August 2008 at Kaharo village in Murang'a South District within Central Province he murdered Julius Mwangi Maina.

The prosecution submitted the evidence of eight (8) witnesses to support its case. At the close of the prosecution's case, learned counsels appearing in this case were invited to make submissions under Section 306 (1) of the Criminal Procedure Code. Counsels opted not to make any submissions.

I have considered the evidence of the eight (8) prosecution witnesses. The question which must be answered at this stage is whether or not the prosecution has established a *prima facie* case to enable this court make a finding on whether or not I should place the accused person on his defence? The eye witness in this case, **Samuel Maina** (P.W.2), told this Court that he was at home on 24<sup>th</sup> august 2008 when at 7.30 p.m. Robert Mungai Maina the accused, arrived. The duo exchanged pleasantries shortly before Julius Mwangi, deceased arrived. When the deceased arrived he inquired from the accused what he had been discussing with their father (P.W.2). It is said the accused began to retreat before cutting the deceased on the ear. P.W.2 said the deceased fell down and the accused fled. P.W.2 and the area chief made arrangements to have the deceased transported to hospital where he was pronounced dead upon arrival in the hospital. P.W.2 said that the deceased and the accused being his sons had picked up a quarrel that day though they had a cordial relationship before the incident. P.W.2 further stated that duo were under the influence of alcohol. **Esther Wamwai** (P.W.3) stated that she was inside the house and when she came out she saw the deceased lying down. There was a blood stained panga lying next to the deceased's body. P.W.3 claimed she took possession of the panga and hid it inside the house. It is alleged by P.W.3 that both the deceased and the accused were drunk.

In my humble view the evidence tendered put the accused at the scene of the crime. The accused is linked with the offence of murder. In sum, I am convinced the prosecution has made out a *prima facie* case hence I am enjoined to place the accused on his defence.

It is now upon the accused and his legal advisors to indicate whether the accused will personally testify and if so whether he would give sworn or unsworn testimony. Whether the accused is going to summons independent witnesses?

***Dated and delivered at Nyeri this 15<sup>th</sup> day of February, 2012.***

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**J. K. SERGON**  
**JUDGE**