

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO. 14 OF 2011

REPUBLIC..... PROSECUTOR

VERSUS

ABU RAJAB ESHIWANI..... ACCUSED

R U L I N G

The Accused, **ABU RAJAB ESHIWANI**, is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code.

The particulars of the offence are that on the night of 21st and 22nd February, 2011 at Ebokondosi village, Eshirali Sub-location, Mulwanda Location, in Khwisero within Kakamega County, of Western Province, murdered **PASCAL SANDE AMESO**.

The case for the prosecution is that on 22.2.11 at about 10.00 a.m. **PW2, HELLEN AYUMA ATINGA** who is an in-law to the deceased was at her home near the gate when the accused told her that he had found the deceased stealing his food crops and had arrested and beaten him. This prompted the family members of the deceased to start looking for the deceased. The body of the deceased was found near a swamp. The body had injuries. The body was removed from the scene and investigations commenced.

The Prosecution called a total of six witnesses. **PW1, THOMAS ESHITUKU SWAKA** is the Assistant Chief of the area where the deceased hailed from. He had no tangible evidence as to who killed the deceased.

PW2, HELLEN AYUMA ATINGA gave evidence that the accused had told her that he had beaten up the deceased who had stolen his food crops from the farm of the accused. There is however no evidence of confession. No witness has testified on the alleged beating.

The evidence of **PW3, ZACHARIAH ATINGA AMESO** and that of **PW4, SILVANUS AMENYA AMESO** who are brothers to the deceased dwells on the reports that were received and action taken. The evidence of **PW5, SGT. STANLEY WAWIRE** the Investigating Officer deals with the formal aspects of the case. There is no evidence of the alleged beating or any tangible evidence on who killed the deceased.

It seems the arrest of the accused was based on what **PW2, HELLEN AYUMA ATINGA** said the accused told her. That alone is not sufficient evidence to warrant placing the accused on his defence. The evidence adduced by the prosecution witnesses fails to establish a prima facie case. The accused is consequently acquitted under S.210 C.P.C.

Delivered, dated and signed at Kakamega this 8th day of March, 2012

B. THURANIRA JADEN

J U D G E