



REPUBLIC ..... PROSECUTION

=VERSUS=

MKALA NGOME ZUMA ..... ACCUSED

### JUDGEMENT

The accused **MKALA NGOME ZUMA** faces a charge of **MURDER CONTRARY TO SECTION 203 as read with SECTION 204 OF THE PENAL CODE**. The particulars of the charge were given as follows:

***“On the 26<sup>th</sup> and 27<sup>th</sup> day of August 2008 at Masinga Village, Lunga Lunga Location in Msambweni District within Coast Province, murdered JUMWA MKALA”***

The accused entered a plea of **‘Not Guilty’** to the charge and his case commenced before Hon. Justice F. Azangalala at the Mombasa High Court on 27<sup>th</sup> October 2009. The Honourable Judge heard a total of four (4) witnesses before he was transferred to Eldoret High court. At that point I did take over the trial and heard the remaining two (2) witnesses. The prosecution having closed its case this court must determine whether the evidence so far adduced is sufficient to warrant the accused being called upon to give his defence to the charge.

There was no eye-witness to the murder. **PW4 LAURENT KATURA** told the court that on 27<sup>th</sup> August 2008 at about 8.00 A.M. he was herding his cattle. He came across a body lying in a dam and called authorities. **PW1 DAVID KIBURA RAI** told court that he went to the scene with the village chairman. They found the body of the deceased lying dead in the dam. The body had a deep cut wound to the left cheek. Whilst they were there the accused came crying and identified the body as that of his wife. Later a search of the accused’s house revealed a blood-stained nylon paper and some wet clothes. The accused was arrested and taken to the police station where he was charged.

**PW5 DR. HELTAN OKANI JILO** the medical superintendant at Msambweni District Hospital produced the autopsy report **Pexb1**. He confirmed that the body had cuts and wounds on the left cheek and a dislocation of the neck bones. The cause of death was opined to be ***“axphyxia as a result of dislocation of the 2<sup>nd</sup> cervical (neck) bone and compression of the spinal code”***

As stated earlier there was no eyewitness to the murder. There is no witness who saw the accused strangle his wife and throw her into the dam. Indeed there is no witness who at any time saw the accused and the deceased together on that day. **PW1** alleged that he went and searched the house of the accused where he recovered a blood-stained paper-bag and some wet clothes. The fact that wet clothes were found in the house is not proof of the accused’s guilt. There is no evidence as to whose blood was on the nylon

bag or how it got there. **PW5** told the court that the nylon bag was taken to the government chemist for analysis. No report was produced from the government chemist. There is no evidence to link this blood to the murder of the deceased. Moreover as a court I find it very curious that police left it to a civilian to conduct a search on the accused's house. **PW6 PC ZABLON BIDINGI** told the court that when police initially searched the house of the accused nothing was recovered yet a few days later **PW1** a civilian conducts a search and recovers these items. The court cannot rule out the possibility that these items were planted at the accused's house, moreso since the accused himself was not present when his house was searched. **PW6** further told court that **PW4** said he had seen the accused wearing the wet clothes. A close examination of the evidence of **PW4** reveals that he said no such thing.

In an attempt to establish motive **PW6** told the court that he was informed by witnesses that accused and his wife had quarreled about proceeds from the sale of charcoal. Not only does no other witness make reference to this alleged quarrel but **PW6** himself admits under cross-examination that he did not include this vital piece of information in his written statement. Why would **PW6** a police officer leave out such a vital clue in his own statement? The only possible conclusion is that this allegation about a quarrel is a mere afterthought concocted to try and solidify the prosecution case.

Basically the court has been treated to mere rumours and innuendo. The evidence against the accused is based on mere suspicion. It is a crucial principle in law that suspicion no matter how strong cannot form the basis of a conviction. I find that no direct and/or tangible link is shown to exist between the accused and the murder of his wife. There is no proof that it was accused who strangled the deceased and threw her body into the dam. I therefore enter a verdict of '**Not guilty**' in accordance with Section 306(1) of the Criminal Procedure Code and I acquit the accused of this charge of murder. The accused is to be set at liberty forthwith unless he is otherwise lawfully held.

**Dated and Delivered in Mombasa this 11<sup>th</sup> day of May 2012.**

**M. ODERO**  
**JUDGE**

In the presence of:

Mr. Nyanga holding brief for Mr. Tindi

Mr. Onserio for State