



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT BUNGOMA**  
**CRIMINAL CASE 38 OF 2008**

**REPUBLIC.....PROSECUTOR**  
**~VRS~**

**MOSES SILAS NGEIYWA..... ACCUSED**

**RULING**

Under section 210 of the Criminal Procedure Code at the close of the prosecution case and after submissions have been made for or against the case, the court has to determine if the evidence called is sufficient to enable the calling of the accused to his defence. If the evidence is insufficient the accused is entitled to the dismissal of the charge and to acquittal.

The accused Moses Silas Ngeiywa was charged with murder contrary to sections 203 and 204 of the Penal Code. The particulars were that on 9/6/2007 at Cheptonon village in Cheptonon sub-location of Kapkateny location in Mt. Elgon District in Western Province he jointly with others not before the court murdered Annah Adionyi Karani. The prosecution called Dr Munyendo (PW1), Odeke Patrick Karani (PW2) and Chief Inspector Samson Otieno (PW3) who gave evidence. The evidence was that PW3 received the murder report and went to the deceased's home. He noted that the deceased's house had been broken into by breaking the door. The deceased's body was outside the house next to a small hill, about 100 metres from the house. It had a cut on the head and buttock and was naked. Sperms were oozing from the vagina. He found the deceased's husband and children who said they had seen the three people who had broken into the house and removed the deceased to go and kill her. They knew the three attackers and by names. The attackers included the accused who was subsequently arrested and charged. The deceased's body was taken to Webuye District Hospital mortuary where post mortem was conducted on 15/6/2007.

The body of the deceased had cut wounds on left knee and right ankle joint. It had multiple bruises on both thighs, anterior chest and left temporal aspect of the head and had lacerations on vaginal walls. It had epidural haematoma of the left temporal aspect of the brain. The cause of death was severe head injury due to blunt trauma with evidence of sexual assault (exhibit 1). PW2 is the one who identified the body for post mortem.

The deceased's husband and children who allegedly saw the people who caused her death were not called to testify. The State informed the court that the two witnesses it intended to call had since died. The consequence is that no evidence was called to link the accused with the murder of the deceased. The charge against him is therefore dismissed and he is acquitted of the same.

**Dated, signed and delivered at Bungoma this 25<sup>th</sup> day of June 2012.**

**A. O. MUCHELULE**  
**JUDGE**