



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**ATMERU**

**Criminal Case 73 of 2009**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**EPHANTUS MWITI.....1<sup>ST</sup> ACCUSED**

**MWENDA KABURU.....2<sup>ND</sup> ACCUSED**

**RULING**

The two accused persons **EPHANTUS MWITI MUTHENGI** (hereinafter the 1<sup>st</sup> accused) and **MWENDA KABURU** (2<sup>nd</sup> defendant) are jointly charged with murder contrary to section 203 of the P.C. The particulars of the charge are that on the 8<sup>th</sup> August, 2009 at Chuka Township in Meru South District they murdered Simon Karani.

The facts of the prosecution case were that PW1 Charity met with the deceased within Chuka Town at about 9 pm on the material night. He offered to buy her beer. PW1 stated that as they walked to the bar they met with the 1<sup>st</sup> accused whom the deceased alleged owed him 2,000/-. The deceased demanded to be paid his money by the 1<sup>st</sup> accused and instead a fight broke out between the two of them. The deceased slapped the 1<sup>st</sup> accused and the 1<sup>st</sup> accused retaliated. Both wrestled to the ground with deceased on top of 1<sup>st</sup> accused. That 2<sup>nd</sup> accused was passing by and he picked a stone and hit deceased with it. Then 1<sup>st</sup> accused picked a spade and hit the deceased all over the body before running away. The deceased was taken to his house by PW1, PW2 and another. He wife PW3 was not home. PW3 took him to hospital next day where he eventually died. The cause of death was found to be a severe head injury due to blunt frame.

The 1<sup>st</sup> accused admitted in his sworn defence that he met the deceased carrying a spade in company of two others. He said the three chased him before the deceased attacked and hit him with the spade repeatedly as his colleagues watched. That the 1<sup>st</sup> accused then took a pluck of wood with which he hit the deceased to protect himself. The 1<sup>st</sup> accused said he picked the spade then asked 2<sup>nd</sup> accused and one Karuga to escort him to the Police Station but they refused. He went and reported to the Police and was issued with a note addressed to Ministry of Health requesting that he be attended. The note was produced as Dexh1. The 1<sup>st</sup> accused also produced treatment notes as Dexh 2.

The 2<sup>nd</sup> accused denied the charge. In his sworn defence the 2<sup>nd</sup> accused said he heard noises near the stage and proceeded to find out what was happening. He said he saw the deceased with a spade and 1<sup>st</sup> accused with a pluck of wood both fighting. A third man, Muchanga ran away. The 2<sup>nd</sup> accused said he saw the 1<sup>st</sup> accused hit the deceased with the pluck of wood and the deceased sat down.

That one Mawira (PW1) who was present took the deceased away. The 2<sup>nd</sup> accused said he declined to escort the 1<sup>st</sup> accused to the police.

**DATED SIGNED AND DELIVERED THIS 7<sup>TH</sup> DAY OF JUNE, 2012**

**LESIT, J  
JUDGE.**