

REPUBLIC OF KENYA

High Court at Nakuru

Criminal Case 93 of 2010

REPUBLIC.....PROSECUTOR

VERSUS

JAMES NJUGUNA WANJIRU.....ACCUSED

RULING

At the close of the prosecution case, consisting only of the evidence of the Chief Barut Location, the brother of the deceased who identified the body of the deceased for the purpose of post mortem examination and the arresting officer, the question to be answered is whether that evidence constitutes a *prima facie* evidence to warrant the accused to be called to enter his defence.

The accused having been charged that on 19th September, 2010, he murdered the deceased, it was the duty of the prosecution to establish at this stage that there is *prima facie* evidence linking the accused with the death of the deceased.

The evidence of the chief can at best be described only as hearsay. He received a call that the body of the deceased had been seen at the scene. Later, he heard that there was a suspect who was being beaten by the mob. He went and rescued the accused person. He also called the police and the accused arrested by P.W.3. That evidence is far below the standard set by the cases of **Republic V. Kipkering Arap Koske & Another** (1949) 1 EACA 135 and **Simeon Musoke V. Republic** (1958) EA 715.

No conviction can result should the accused elect not to call evidence in rebuttal. It must be noted that the State has been granted amply opportunity to call evidence but failed, even after the court had summoned the O.C.S., who assured the court that witnesses would be availed. Since September, 2010 when the accused person's plea was taken, only three witnesses have testified. Although the accused person's health contributed to this delay, he is nonetheless entitled to a speedy trial.

For these reasons, the accused is acquitted.

Dated, Signed and Delivered at Nakuru this 29th day of October, 2012.

W. OUKO

JUDGE