

REPUBLIC OF KENYA

High Court at Nyeri

Criminal Case 8 of 2008

REPUBLIC.....PROSECUTOR

-versus-

SAMUEL NJERU NJOKI.....ACCUSED

R U L I N G

Samuel Njeru Njoki, the Accused Person herein, is before Court on the information of the Attorney General dated 29th January 2008 and substituted on 9th April 2008, to face a charge of **Murder** contrary to the **Provisions** of **Section 203** as read with **Section 204** of the **Penal Code**. At the close of the Prosecution's case, a total of eight (8) witnesses testified in support of their case. Pursuant to the **Provisions** of **Section 306** of the **Criminal Procedure Code**, Learned Counsels from both sides were invited to make submissions as to whether or not a case to answer had been made out. This Ruling is the outcome of those submissions.

I have considered the evidence of the eight Prosecution Witnesses plus the rival submissions. The particulars of the offence are that on the 6th day of January 2008 at Karatina Village in Kirinyaga District of Central Province, he murdered Samuel Mwangi Benson. A critical examination of the evidence of Symon Mwangi Kimani (P.W.1), John Gitari (P.W.2) and Francis Murimi Njiru (P.W.3) will reveal that the Accused herein is placed at the scene of crime. It is the evidence of P.W.1 and P.W.2 that the Accused was seen assaulting the deceased when he failed to comply with a command directing him to lie down. Dr. Njau Mungai (P.W.7), the Pathologist who performed a Post-Mortem on the deceased's body was of the opinion that the deceased died as a result of head injury due to assault. At this stage, it is clear in my mind that there is evidence connecting the accused to the offence he now faces. I hereby find that the Prosecution has made out a *prima facie* case. Consequently, I order that the accused be placed on his defence. It is now upon the Accused and his Legal Advisors to answer the following questions:

- (i) *Whether or not the Accused will personally testify?***
- (ii) *If the answer to (i) above is yes, whether he will give sworn or unsworn testimony?***
- (iii) *Whether or not the Accused will summon independent witnesses?***

Dated, signed and delivered this 18th day of October 2012.

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J. K. SERGON

JUDGE