



REPUBLIC OF KENYA

High Court at Eldoret

Criminal Case 43 of 2010

REPUBLIC.....PROSECUTOR
VERSUS

DANIEL BOAZ KIBARON.....ACCUSED

RULING:

The Accused was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.

The particulars of the offence are that on the 6th day of January, 2010 at Orion Bar in Hawaii area in Uasin Gishu District in the Rift Valley Province the Accused murdered **PATRICK KIPKORIR LELIT**.

The prosecution called a total of six (6) witnesses and was compelled to close its case as it was unable to secure the attendance of the remaining ten (10) witnesses.

At the close of the prosecutions case Prosecuting Counsel for the State made submissions that it was relying on the evidence on record to support its case.

Counsel for the Accused made submissions that the prosecution had not made out a prima facie case to warrant putting the Accused on his defence. Counsel therefore urged the court to acquit the Accused.

I have perused the court record and find evidence of two (2) prosecution witnesses namely **PW2** and **PW3** who testified that they attended the postmortem and identified the body of the deceased for postmortem purposes.

Upon further perusal of the record, I find no evidence of any Doctor nor any evidence of a postmortem report being produced or submitted into court. Reference is made to the case of **OMAR RAJAB & ANOTHER -VS- R. C.A NO. 231/2006** where it was held;

“.....In the absence of a postmortem Report on the deceased it is not possible to state the immediate cause of death of the deceased.....”

This court finds that there is insufficient evidence to support the cause of death and that the prosecution has failed to make out a prima facie case at the close of its case.

The court therefore finds that a case is not made out against the Accused person sufficiently to require him to make a defence.

CONCLUSION:

The court finds the Accused not guilty and the Accused is hereby acquitted forthwith under the provisions of Section 306 of the Criminal Procedure Code.

It is so ordered

DATED and DELIVERED at Eldoret this 17th day of December 2012

**A.MSHILA
JUDGE**

Coram: Before Hon. A Mshila J
CC: Winnie

Counsel for the State: Ruto holding brief for Kabaka for State

Counsel for the Accused: Ngige
Language: Kiswahili
Accused: Present.

**A.MSHILA
JUDGE**