



REPUBLIC.....
.....PROSECUTOR
VERSUS

SAMSON INDIYA.....1ST ACCUSED

JACOB INDIYA (DECEASED).....2ND ACCUSED

RULING

1. The accused persons in this case (including Jacob Indiya (*deceased*) were jointly charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. It was alleged that on 27th December 2004, at Esongolo Village, Esienda Sub-Location in Vihiga District within Western province, they murdered Vincent Indiya.
2. From the record, they were first arraigned in court on 3rd March 2005 but only entered a plea of “*not guilty*” on 11th April 2005. Thereafter, they appeared in court on a number of occasions but their trial only began on 6th May 2008 when PW 1, Alice Indiya testified. On 28th January 2009 PW2, Patrick Olasio Olango testified. Thereafter no other witness gave evidence and on 2nd March 2011, the State closed its case without calling any other witness.
3. The evidence of PW1 and PW2 was that on 27th December 2004 at 9.00 p.m., PW1 heard screams from Vincent Indiya’s home and when she went towards that house, the screams subsided and entered into the house where she found that Vincent was apparently writhing on the ground and she began screaming for help. She then heard the voice of one Jacob (*the 2nd accused who is since deceased*) telling some people to go away. She heard no other voice and so she went to sleep and left Vincent in his house.
4. The next day, she went to see Vincent again and he informed her that he had been injured by thugs who had blindfolded him before beating him up. She then made a report to the village elder who was not at home as so she made a report to PW2, the Assistant Chief. Later, the deceased died and according to PW2, it was the village elder, Oporu Mulama, who later informed him that the deceased had been beaten by his brothers, the accused persons herein. He visited the deceased’s house in the company of the 2nd accused who was arrested the same day on suspicion of having killed his mentally slow brother.
5. From the above evidence, I am not satisfied that a prima facie case has been made out to warrant the remaining accused person to be put on his defence. I say so because from the evidence of the two witnesses who testified, there is no evidence to connect him to the death of his brother, and it is hearsay for PW2 to say that the village elder told him that he was one of those who had beaten the deceased. PW1 who was the first person to see the deceased after being injured said that the deceased told her that he had been beaten by thugs and his brothers. The village elder, Mulama, never testified in any event.
6. I am therefore clear in my mind that the evidence on record cannot meet the expectations of the law and so I do not see that the 1st accused person has any case to answer.

7. As the 2nd accused is deceased, there is nothing more to say, save to state that the 1st accused person and is acquitted forthwith of the charge of murder.

8. He may be released unless he is otherwise lawfully held.

9. Orders accordingly.

I. LENAOLA

JUDGE

**DELIVERED, DATED AND COUNTER-SIGNED BY L. KIMARU, JUDGE AT KAKAMEGA
THIS 4TH DAY OF JULY, 2011**

L. KIMARU

JUDGE