



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 77 OF 2003

LESIIT J.

REPUBLICPROSECUTOR

VERSUS

CHARLES THURANIRA.....ACCUSED

J U D G M E N T

The accused **Charles Muthinja** is charged with murder contrary to section 203 as read with section 204 of the Penal Code. It is alleged that on the 16th March, 2003 at Njea Village Kimitii Sub-Location Mbeu Location Meru North District he murdered SEBATHIAN KAINGA.

The prosecution called three witnesses. PW1 was a son of the deceased. His evidence was that on the 31st March, 2003 he identified the body of his father to the doctor who carried out a post mortem examination on the body.

PW2 and 3 Charity Kathure Njugu and Hellen Kendi respectively were young girls on the 16th March 2003. Their evidence was that they were drawing water at the river when the accused found them. They said he had a blood stained knife with fresh blood on it.

Both witnesses said that he placed the wet knife on PW3 and asked them why they were laughing. That the accused walked away and three minutes later the girls heard people screaming. They later learnt that the uncle to PW2 was dead.

The prosecution is relying on the evidence of PW2 and that the accused went running towards the two girls with a knife with fresh blood on it; and that the side from which the accused came from is where the deceased was found dead.

The prosecution has not adduced any evidence on the cause of death of the deceased. The prosecution needed to show that the cause of the death was an injury which led to bleeding in order to create some nexus between blood and the death. In addition the prosecution needed to create a nexus between the deceased and the accused. It is not enough to show that the accused was seen running with a blood stained knife from the direction the deceased body was found three minutes after he passed. The blood could have been from any mammal, including the accused himself.

The prosecution did not bring any evidence from the arresting or investigating officer to show the reason for his arrest and subsequent arraignment for this offence.

Having carefully considered this evidence adduced by the prosecution in this case, I am not satisfied that a prima facie case has been established against the accused.

Under S. 306 of the Criminal Procedure Code I acquit the accused of the offence he faces of murder c/s 203 of the Penal Code at this stage.
Those are my orders.

DATED, SIGNED AND DELIVERED THIS 24TH DAY OF NOVEMBER, 2011

J. LESIIT
JUDGE