



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 30 OF 2008

REPUBLICPROSECUTION

VERSUS

JAMES MURERWA MATHENGE ACCUSED

RULING

The accused **James Murerwa Mathenge** is charged with murder contrary to section 203 as read with Section 204 as read with Section 204 of the Penal Code. It is alleged that on 23rd March 2008 at Nkui Village Mitunguu Location in Imenti South District the accused murdered **Cornelius Mathenge Gitonga**.

The facts of the prosecution case are that the accused is a son of the deceased. The prosecution called four witnesses. PW1 Frida was the sister in law of the accused, married to accused person's brother. The evidence was that the deceased went home with some meat and asked her to give him a plate and a knife. She gave him a panga as that is all she had. It was in the afternoon. PW1 left home and returned at 5pm only to find the deceased bleeding from a wound on the back of the neck.

PW1 Isaac was the son of the deceased older than the accused. His evidence was that he left home at 8am on 23rd March 2008 and did not return until 6pm when one Joseck told him of his father's condition. PW2 took a bicycle and went home. He found his father at the door to his house with a cut on the back of the neck. He was lying down and was bleeding from the wound. He was still alive. PW3 called him from the scene to take him to hospital but he died on the way and so he returned the body home.

PW3 said that his brother the accused in this case was arrested the next day. He did not say why or in which circumstances the accused was arrested. PW3 Silas was the sub area of the Erito village where this incident occurred. His evidence was that the area sub chief called him on phone and directed her to go for a man who had been arrested at 5pm that day. He went to the village and to find an irate crowd which wanted to kill him. PW3 rescued the man identified as the accused in this case.

PW4 was PC Mugoye. He told the court that his brothers, including PW2 Isaac reported the incident to him on 24th March 2008 at 8.30am. The two brothers implicated their brother, the accused in this case, of killing their father. Whatever PW3 told PW4 did not feature in his evidence. In any event it may not have been admissible. It is likely to be information he received from other sources. I am of the view for the simple reason that the report was made one day after the incident. If PW3 and his brother knew of their brother's involvement, I am certain they could have informed the police the same day.

PW4 collected the body of the deceased from home and took it to Meru Hospital mortuary. PW4 produced the post mortem report on the deceased. It shows that the deceased had a deep linear cut on the occiput and a compound fracture of the same.

PW4 also produced the panga he found at the scene as a possible murder weapon. It was P. exhibit 2.

I considered the evidence adduced by the prosecution. There is no evidence to create any nexus between the accused and the death of the deceased. The record of proceedings are clear that witnesses declined to come to court to testify. They were members of the accused and deceased family. Those who were bold to testify in court either never witnessed the incident or concealed whatever information they had from the court. The evidence adduced before court was valueless. It was insufficient to establish *prima facie* case against the accused person.

I find that from the evidence adduced before this court, there is no evidence upon which this court can act to place the accused to his defence. I acquit the accused of the charge of murder contrary to section 203 of the Penal Code under Section 306 of the Criminal Procedure Code.

DATED, SIGNED AND DELIVERED AT MERU THIS 8TH DAY OF DECEMBER 2011.

**LESIT, J.
JUDGE**