



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Criminal Case 22 of 2008

REPUBLIC..... PROSECUTOR

VERSUS

SAMUEL KAHUGI WAWERU..... ACCUSED

R U L I N G

The accused, **SAMUEL KAHUGI WAWERU** is being tried for the offence of murder contrary to **section 203 as read with section 204 of the Penal Code**. It is the contention of the prosecution that the accused murdered **PATRICK KAHIA MUKONO**, jointly with others who are not before the court. The incident is said to have taken place at Kiganjo Trading Centre, on 23rd February, 2008.

By the close of the prosecution case, the prosecution had called seven (7) witnesses.

Having analysed all the evidence adduced by the seven witnesses, it is clear to me that the deceased had suffered a fracture to his spinal cord.

According to the doctor who carried out the post mortem on the body of the deceased, the fracture to the spinal cord was caused by a blunt force which was applied to the neck of the deceased.

In my considered view, the said cause of death appears consistent with the attack which the deceased told his daughter about. The deceased had said that he had been hit on the back.

And when the deceased was still admitted in hospital, he told several people that the accused was the person, or one of the persons who had attacked him.

As it appears that the deceased knew the accused very well, it does appear that the chances of mistaken identification were very unlikely.

In effect, it appears that the accused has been directly linked to the assault on the deceased, which thereafter led to his death.

In the event, I find that the prosecution has established a prima facie case against the accused. Accordingly, the accused has a case to answer. He is therefore put to his defence.

Dated, Signed and Delivered at Nairobi this 10th day of February, 2010.

.....

FRED A. OCHIENG

JUDGE