



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI Criminal Case 57 of 2008**

**REPUBLIC.....PROSECUTOR**  
**VERSUS**  
**SIMON KAMAU KIMANI ..... ACCUSED**

**R U L I N G**

Simon Kamau Kimani is before this court on information of the Honourable Attorney General dated 21<sup>st</sup> October 2008 duly charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the charge are that on the night of 29<sup>th</sup> August 2008 at Gakira Sub-location in Murang'a District within Central Province, murdered John Irungu Wanderi.

The prosecution closed its case after presenting the evidence of seven witnesses. Pursuant to the provisions of Section 306, learned counsels from both sides were invited to make submissions on whether or not a case has been made out a prima facie case to enable this court place the accused on his defence. It would appear this case heavily depended on circumstantial evidence since no eye witness testified. Isaac Macharia Maina, PW1 told this court that on 14<sup>th</sup> January 2008 he overheard people who were walking ahead of him next to Kangema stadium allege that John Irungu Wanderi, deceased may have been stabbed by Simon Kamau Kimani the accused herein. PW1 said he passed on that information to Grace Wanjiru (PW2), an aunt to the deceased. Upon receipt of that information, PW2 reported to the village elder and her sister Wangechi Wanderi. The information was passed on the police on 17<sup>th</sup> September 2008. Samuel Mwangi Gathara (P.W.4) narrated to this court that on 30<sup>th</sup> August 2008 at about 11.00 p.m. he left the church for home and upon reaching Kangema Polytechnic, he heard someone scream. That person ran towards where P.W.4 was alleging he had been stabbed. P.W.4 flashed a torch and recognised that person to be the deceased. He was holding his chest which was bleeding. P.W.4 made arrangements to walk the deceased to hospital and on the way the deceased was given a lift by the area chief. It is said he was pronounced dead on arrival at Murang'a District Hospital. P.W.4 found a knife next to where he met the deceased. P.C. Stephen Gichohi Wamwati (P.W.6) said he met the deceased at Karumaindo in Kangema on the night of 29.08.2008. P.W.6 said the deceased left for his home between 9.30 – 10.00 P.M. Chief Inspector of police, John Mururu (P.W.7) said on 30.8.2008 he received a report of the deceased's death from Samuel Gathara Mwangi (P.W.4). P.W.7 visited the scene. He alleged that the deceased met the accused in a bar and that the duo fought over a woman. P.W.7 produced the knife which was handed over to the police as an exhibit in evidence. The post-mortem report which was produced by P.W.7 indicated that the deceased died as a result of cardiopulmonary arrest due to night hemopneumothorax secondary to a stab wound.

I have analysed the entire prosecution evidence. It is obvious that the accused's name was mentioned by people unknown to P.W.1. The witness who first met the deceased did not state that the deceased told him he was stabbed by the accused. The knife which was allegedly used to stab the deceased was not subjected to any analysis? The investigating officer did not tell this court the source of the information alleging that the deceased had fought with the accused over a woman in a bar. The overall picture I get from the evidence tendered is that the case was either not thoroughly investigated or in the alternative, the witnesses were economical with the truth. It would appear the truth was suppressed. In the end I find that the prosecution have not made out a prima facie to enable me place the accused on his defence. There was completely no nexus between the accused and the offence. I hereby acquit the accused of the offence of murder. He is hereby set free forthwith unless lawfully held.

*Dated and delivered this 28<sup>th</sup> day of May 2010*

**J. K. SERGON**  
**JUDGE**

In open court in the presence of the Accused. No appearance Karweru for the Accused. Mr. Makura for the State.