



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

Criminal Case 111 of 2008

REPUBLIC..... PROSECUTOR

VERSUS

DAVID MWAURA KABERI.....ACCUSED

R U L I N G

The accused, **DAVID MWAURA KABERI**, is on trial for the offence of murder, **contrary to Section 203 as read with Section 204 of the Penal Code**. The particulars of the offence, as spelt out in the Information, are that on 5th December 2008, at Juja Farm in Thika District, the accused murdered **MICHAEL MUMO KIILU**.

By the close of the prosecution case, there had been testimonies from eight (8) witnesses. I am now required to determine whether or not the evidence on record is sufficient to warrant putting the accused on his defence.

The doctor who conducted the post-mortem examination on the body of the deceased noted that the deceased had injuries on the right side of his head. He noted a depressed skull fracture.

When he opened up the head, Dr. Virginia Musau (**PW 8**) found blood on the brain. She also found blood below the skin, outside the skull.

Upon examination, **PW 8** found that the brain matter had suffered a blunt injury, which caused lacerations to the brain tissue and some bleeding from the lacerations. Blood had collected at each layer of the brain.

Having made the foregoing findings, the doctor formed the considered opinion that the cause of death was the head injury caused by a blunt force applied to the head.

However, the doctor was unable to specify if the injury could have been caused by a fall or any other particular object.

When the court raised questions, the doctor explained that the two fractures which the deceased suffered to his head, could not have been caused by a fall. The fractures were to the right side of the head.

According to the doctor, a fall would normally result in injuries to the frontal part of the head. She further explained that if a person fell down sideways, the fall would normally be cushioned by his shoulders, so that the chances of fractures to the side of the head were minimized.

The doctor also testified that the linear fracture which the deceased suffered, could have been due to the depressed fracture which the deceased suffered. Her reason for so concluding was that the depressed fracture could have been due to so much force, which ended up

being transmitted elsewhere, giving rise to the linear fracture.

The cause of death appears consistent with the evidence which showed that the deceased was hit on the head, with a stone.

The said stone was said to have been hurled at the deceased by someone who was well known to him. And from the outset, the deceased appears to have identified his assailant, as the accused herein.

In effect, the evidence tendered by the prosecution places the accused squarely at the scene of crime, and indicates that he was probably responsible for inflicting the fatal blow to the head of the deceased.

In the circumstances, there is no doubt in my mind that the accused has a case to answer. I so find because the evidence on record would be sufficient to found a conviction unless the defence put forward casts some doubt on the said evidence.

Dated, Signed and Delivered at Nairobi, this 28th day of September, 2010.

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FRED A. OCHIENG
JUDGE