



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT MERU**

**Criminal Case 64 of 2007**

**REPUBLIC ..... RESPONDENT**

**VERSUS**

**DERFINA KARAMBU ..... 1<sup>ST</sup> ACCUSED**

**JOHN NKUBI M'IMPUI ..... 2<sup>ND</sup> ACCUSED**

**RULING**

Both accused persons are charged with the murder of the deceased, David Muteithia on 1<sup>st</sup> August, 2007 contrary to section 203 as read with section 204 of the Penal Code.

The prosecution has closed its case and in terms of section 206 of the Criminal Procedure Code, this court is enjoined to inquire if the prosecution evidence discloses a *prima facie* evidence to warrant the court to ask the accused persons to defend themselves. A *prima facie* case is one on which a conviction may be based if the suspect decides not to call evidence in rebuttal. See **RAMANLAL TRAMBAKLAL BHATT V. R.** (1957) EA 332.

The evidence so far presented by the prosecution show that the deceased arrived at the house of the 1<sup>st</sup> accused for a drink of chang'aa. He found PW1, James Koome (Koome) and PW7, Earnest Muteithia (Earnest) already drinking. The two confirmed in their evidence that when the deceased arrived he was already very drunk. He ordered and was served with a glass of chang'aa. Because of his state of inebriation the deceased was becoming a nuisance to the 1<sup>st</sup> accused who went to the next room and called the 2<sup>nd</sup> accused to assist her in ejecting the deceased.

In the process the deceased struggled and argued with the 2<sup>nd</sup> accused. As a result of the struggle the 2<sup>nd</sup> accused threw the deceased out of the room causing the deceased to hit his head on a stone wall. When all this was happening, the 1<sup>st</sup> accused remained in the house only watching. Both Koome and Earnest left for their respective homes, leaving the deceased lying on the ground where the 2<sup>nd</sup> accused person had thrown him. Koome noted a scratch on the deceased person's head as they left. PW2, Faith Mukiri (Faith), the next door neighbour to the 1<sup>st</sup> accused confirmed having heard noises on the material night from the 1<sup>st</sup> accused person's house. She was not able to hear what the people making the noises were saying. But the following morning she noticed the 1<sup>st</sup> accused person sweeping outside her house and the body of the deceased lying nearby. The 1<sup>st</sup> accused asked Faith to accompany her and the 2<sup>nd</sup> accused to the sub-area (village elder) to report the incident.

Another neighbour, PW3, Martin Mutea, whose evidence is rather confused, heard commotion in the 1<sup>st</sup> accused person's room but did not know who were struggling. The following day, he saw the body of the deceased lying some 5m from the 1<sup>st</sup> accused person's house and the latter sweeping the area. A report was made to PW5, Jeremiah Mugambi Iringo who went to the scene and confirmed the death of the deceased.

The matter was also reported to the police and the deceased person's brother, PW6, Luke Gikundi. Investigations commenced and the accused persons were arrested. The post mortem investigations conducted by PW4, Dr. Isaac Macharia revealed that the deceased suffered a fracture of the skull which in the doctor's opinion was the cause of death.

That, in brief, is the prosecution case. Is it sufficient to warrant the court to ask the accused persons to defend themselves? At this stage, I will not, deliberately, say anything about the 2<sup>nd</sup> accused person. But the role of the 1<sup>st</sup> accused person in the transaction is clear.

The deceased, was no doubt, drunk. The scene was the 1<sup>st</sup> accused person's house, where chang'aa was being sold. The 1<sup>st</sup> accused person, for one reason or the other was not pleased with the deceased. She sought help from her neighbour, the 2<sup>nd</sup> accused, to assist her eject the deceased from her house. As the 2<sup>nd</sup> accused was ejecting the deceased, the 1<sup>st</sup> accused was only watching.

There is evidence on record that when the deceased came to the 1<sup>st</sup> accused person's house, a part from being very drunk, he appeared physically well. After being ejected, the deceased lay on the ground outside the 1<sup>st</sup> accused person's house and was confirmed dead. Is there any evidence linking the 1<sup>st</sup> accused person with the injuries noted by the doctor as the immediate cause of the deceased person's death?

Did she share with the 2<sup>nd</sup> accused person common intent? In my considered view, up to this stage no *prima facie* case has been established against the 1<sup>st</sup> accused person, who only sought assistance to have the deceased removed from her house. That was her only role.

For these reasons, the 1<sup>st</sup> accused is acquitted under section 206 of the Criminal Procedure Code and will be set at liberty forthwith unless she is lawfully held.

I find, however, that there is *prima facie* case against the 2<sup>nd</sup> accused person, who is hereby called upon to make his defence.

Dated and delivered at Meru this ...19<sup>th</sup> ....day of ...June... 2009.

**W. OUKO**

**JUDGE**