



1. Criminal Law
2. Murder contrary to **Section 203** and **204** of the Penal Code.
 - i. **Particulars of offence**
 - That on 8th February, 2007 at Matiret village in Kericho District within Rift Valley Province murdered Fredrick Nyakango.
 - ii. The deceased was the foster son to the accused.
 - iii. Accused married the mother in 1992.
 - iv. Accused seen in fits of anger with an axe (*opening address*) and threatened the deceased.
 - v. Deceased went to have a bath.
 - vi. Deceased disappeared.
 - vii. Deceased body recovered on 10.2.09.
 - viii. Accused premeditated murder
3. **Submission by advocate for accused.**
 - i) No evidence to put the accused on his defence.
4. **Submission by the advocate for estate:-**
 - i. State prosecution proved its case.
 - ii. Mysterious drowning.
 - iii. He be put on defence.
5. **Held**
 - i. Not sufficient evidence to call the accused to be put on his defence.
 - ii. Not guilty
6. **Case Law** - Nil
7. **Advocate**
 - P. Kiprop state counsel instructed by the Attorney General for the state – present
 - J.M. Motanya advocate instructed by the firm of M/S Motanya & Co. advocates for the accused – present.

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
CRIMINAL CASE 11 OF 2007

REPUBLICPROSECUTOR
VERSUS
ANDREW KIPRUTO MARTIM ACCUSED

RULING

I: Procedure

1. The information before me is that of murder contrary to **section 203** as read with **section 204** of the Penal Code.
2. The particulars of the information being **on the 8th February, 2007 at Matiret village in Kericho District within Rift Valley Province murdered Fredrick Nyakango.**
3. A plea of not guilty was entered on 24th April, 2007, Koome J. The trial commenced after the issue of representation was went through. Mr. Maengwe was to represent the accused but failed to appear 20th February, 2008 before Koome J, 6th March, 2008 and before Maraga J. On 8th April, 2008, Mr. Motanya appeared for the accused.

4. On 24th June, 2008 the trial commenced before Kariuki J. Thus, the prosecution stated they would call three witnesses. The Hon. Judge heard one witness and adjourned. The Hon. Judge was not available to hear the case, thereafter.
5. On 15th July, 2009 the case began a new before this court.

II: Facts

6. The prosecution in its opening address and the facts before court tried to establish that the accused and his wife were in very bad terms. The wife had come with a son whom the accused did not at all like. That he would at all times quarrel with the son.
7. On the material day of 8th February, 2007 the son drowned at the river. It was suspected that it was the accused who caused that drowning.
8. PW1, received information that the brother had drowned. PW2 heard of the drowning but did not witness what occurred.
9. The fact was that the deceased was recovered from the waters having drowned.
10. PW3 the police stated, when the body was recovered there was a cut wound on the lower side of the stomach.
11. The post mortem report showed that there were injuries sustained prior to there being bruises on the scalp and stitches on the right lumber abdominal wound.
12. The advocate for the accused stated there was no sufficient evidence to place the accused to answer to the offence.
13. The state said there was sufficient evidence.

III: Findings

14. The post mortem report shows the injuries sustained were old. I was under the impression that the accused hit the deceased, wounded him and threw him in the river. The medical evidence shows the injuries allegedly inflicted were injuries whereby the same had stitches. It therefore means that the wound inflicted could not have occurred on 8th February, 2007. The cause of death as per the doctor's report was due to peritonitis and hemorrhage from penetrating abdominal wound – around the digestive system.
15. It is my considered view that there is no evidence that the accused committed the offence of murder. A finding of not guilty is entered under **Section 306(1)** of the Penal Code.

DATED this 13th day of October, 2009 at **KERICHO**

M.A. ANG'AWA

JUDGE

Advocate

P. Kiprop state counsel instructed by the Attorney General for the state – present
J.M. Motanya advocate instructed by the firm of M/S Motanya & Co. advocates for the accused – present.