

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Criminal Case 78 of 2004**

REPUBLIC.....PROSECUTOR

VERSUS

PATRICK MUNYUA KARANJA.....ACCUSED

RULING

The Accused, Patrick Munyua Karanja, is charged with murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. It is alleged that during the night of 9th and 10th October, 1998 at Njoro Township within Nakuru District of Rift Valley Province, jointly with others who are already in court, he murdered Reuben Ngugi Ndagutha (the deceased).

Though that prosecution was granted ample opportunity, it only managed to call three witnesses. PW1 and PW2 are brothers of the deceased. They testified that on 9th October, 1998, as they were drinking medusa liquor at Njoro Township with their brother the deceased, Accused went there totally drunk. The deceased slapped him and ordered him out but he did not comply. The watchman pushed him out but he returned through the back door. PW2 bought him some beer to pacify him. He claimed that he saw Accused with a dagger but he did not disarm him as he thought he was harmless. After some time they all got out and went different ways.

When they wre out they saw the deceased struggle with the Accused but did not take it seriously as they thought that was a struggle of two drunkards. The struggle lasted about two minutes and the two went their separate ways. The following day the deceased was found dead not far from the confrontation spot.

PW3, a girlfriend of PW1, went out with the two brothers but she did not herself witness any confrontation between the Accused and the deceased.

Section 203 of the Penal Code defines murder in the following terms:-

“Any person who of malice aforethought causes the death of another person by any unlawful act or omission is guilty of murder.”

From this definition, it is clear that there are three ingredients of murder which the prosecution must prove beyond reasonable doubt in order to secure a conviction. They are, (a) the death of the deceased and the cause of that death; (b) that the accused committed the unlawful act which caused the death of the deceased and (c) that the Accused had the malice aforethought. See **Nyambura & Others-Vs-Republic, [2001] KLR 355.**

It is not in doubt that the deceased died. There is, however, no proof that the accused committed the unlawful act which caused the death of the deceased leave alone that he had the malice aforethought. As I have said PW1 and PW2 saw the deceased struggle with the Accused for about two minutes after which the two separated and walked away normally. There is no evidence that the Accused stabbed the deceased. After the two separated at about 11.00 pm the deceased was found dead the following morning. Anyone else could have killed the deceased after he parted company with the Accused. Besides all this the cause of the deceased’s death has not been established and/or linked to the Accused. In the circumstances I find that the prosecution has not established a prima facie case against the Accused to

require him to defend himself. Consequently I acquit him under Section 306 of the Criminal Procedure Code and order that he be set at liberty forthwith unless otherwise lawfully held.

DATED and delivered this 24th day of November, 2009.

D.K. MARAGA

JUDGE.