



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Criminal Case 32 of 2007

JOSEPH LESEIYIO MWANGI KISIO.....1ST ACCUSED

ELIAS MACHARIA GATHUA.....2ND ACCUSED

VERSUS

REPUBLIC.....RESPONDENT

RULING

JOSEPH LESEIYIO MWANGI KISIO and ELIAS MACHARIA GATHUA the accused in this case are charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. It is alleged that on the night of 6th and 7th March 2007 at Olokirikirai Village in Narok District of Rift Valley Province they jointly murdered Solomon Maina Macharia (the deceased).

The prosecution case is that the deceased had leased some land in Narok on which he grew potatoes for sale. PW1 and PW2 are neighbours who used to do some casual work for the deceased. On 7th February 2007 they did not go to the deceased's farm apparently because there was no work for them. On 7th March 2007 at about 1.00 p.m. PW2 was surprised to see the deceased's door banging. She informed PW1 and when they both went in they found the deceased's body lying in a pool of blood near the door to his bedroom. The matter was reported to PW4 who went to the scene, collected the body and took it to the mortuary where PW5 carried out a post mortem examination and opined that the cause of death was intracranial pressure due to blunt injuries on the head.

Of the six witnesses called by the prosecution none saw either of the accused murder the deceased. PW4 claims that the reason why the 1st accused was arrested was because he was the last one to be seen with the deceased but he did not say when or where. He said accused two was arrested because he was found with a jeans trouser which the deceased's wife identified as belonging to the deceased. That trouser was not produced as it was allegedly that it misplaced in the police station.

This is all the evidence on record against the accused persons. It has not got anywhere near proving the charge against the accused persons to warrant putting them on their defence. Consequently I find that the accused persons have no case to answer and I accordingly acquit them under **Section 306(1)** of the **Criminal Procedure Code**. They shall be set free forthwith unless otherwise lawfully held.

DATED and delivered at Nakuru this 3rd day of December, 2009.

D. K .MARAGA

JUDGE.