

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Criminal Case 47 of 2004

REPUBLIC.....PROSECUTOR

VERSUS

SOLOMON KABUTI EJWA.....1ST ACCUSED

CRIOPUS MUTUNDU MOSES.....2ND ACCUSED

JUDGMENT

SOLOMON KABUTI EJWA and **CRIOPUS MUTUNDU MOSES** are charged with murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the charge against them are that during the night of 2nd and 3rd February 2004 at Mukarafu Estate, Nakuru District of Rift Valley Province they murdered John Kuliyo Parsalach. They denied the charge and after calling the evidence of five witnesses the prosecution closed its case.

The prosecution case is that on 2nd February 2004 at about 5.30 p.m. PW1 and PW2 who are mechanics at Mkarafu Garage left their watchman, the deceased, at their garage alive and well. The following morning when they reported on duty they found his dead body in the garage with several cut wounds on the head. Dr. Aduro who performed the post mortem on that body later opined that the cause of death was cardio respiratory failure due to intracranial haemorrhage resulting from the head injury caused by a blunt object.

On being called, police went to the scene immediately and while there with a crowd that had gathered, a young girl by the name Susan Warikia pointed at the Accused persons, who were in the crowd, as the people she saw beating up the deceased the previous night. They were immediately arrested and later charged with this offence. The Investigating Officer, PC Micah Yator, PW5, said that the prosecution was to rely entirely on the evidence of that girl. However, due to the post election skirmishes they are not able to trace her at all. That explains why the prosecution closed its case without calling her.

It is clear from what is stated hereinabove that the prosecution has adduced no evidence at all against the Accused persons. In the circumstances I find that the Accused have no case to answer and I accordingly acquit them under **Section 306** of the **Criminal Procedure Code**. I order that they be set free forthwith unless otherwise lawfully held.

DATED and delivered at Nakuru this 24th day of July, 2008.

D. K. MARAGA

JUDGE