



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Criminal Case 21 of 2004**

**REPUBLIC.....APPLICANT**

**VERSUS**

**PETER MBUGUA MUTURI.....RESPONDENT**

**JUDGMENT**

The accused has been charged for the offence of murder, contrary to Section 203 as read with Section 204 of the Penal Code, Cap 63, Laws of Kenya. The particulars of the offence as stated in the information are as follows:-

*“On the 31<sup>st</sup> January, 2002 at Gatuanabu village in Kiambu District, Central Province, murdered PETER KAHURA KIARIE”*

In his evidence, PW1 testified that he is a farmer and also a nephew to the deceased. He recalled that on 31<sup>st</sup> January, 2002 he was in his shamba doing irrigation with Peter Kahura (the deceased) and James Kiarie Ngugi. While there, a young man called Peter Mbugua went there and differed with James Ngugi after he stepped on his crops. In response, Ngugi told him to stop stepping on the crops. Immediately, Peter Mbugua started assaulting Ngugi and a fight ensued. Consequently, Peter Mbugua (now the accused) left while Ngugi continued with his work. Subsequently, the accused went around the mountain and went back to the scene while carrying a panga that was hidden in his coat. When the accused flashed out the panga, Ngugi started running away. It was at that stage that the deceased also pursued them so that he could separate the two. On reaching James Ngugi, the accused assaulted him with a panga on the right hand and then walked away from the scene. Subsequently, PW1 heard James Ngugi screaming and on rushing to the scene, he found that the deceased had been assaulted on the hand. Consequently, PW1 and other people organized for the deceased to be taken to Kikuyu Hospital where he was pronounced dead. From there, PW1 went and reported the matter at Kikuyu Police Station. PW1 concluded his evidence by stating that he had observed that the accused was drunk on the material day. In his evidence, PW2 – Stephen Matinde Joel Waibe, a Government analyst, stated that he knows Jeremiah Munguti whom he used to work with, till the latter left the public service on 1<sup>st</sup> July, 2007 on attaining the mandatory retirement age. That apart, PW2 also testified that he is familiar with the handwriting and signature of the retired officer. PW2 recalled that on 5<sup>th</sup> February, 2002 Mr Munguti received the following items from PC Ngugi:

- a. blood sample – labelled Peter Kiarie (deceased) and
- b. blue jeans trouser of the deceased

After examining the above, Mr Munguti found that the blood sample was of group “B” and that the blue jeans trouser was heavily stained with the same blood. On that basis, Mr Munguti prepared a report – exhibit 1 dated 24<sup>th</sup> July, 2003. On the other hand, PW3 – Dr. Peter Muriuki Ndegwa, a pathologist, referred to a post-mortem report – exhibit 2 that was prepared by Dr. Olumbe on 5<sup>th</sup> February, 2002. The exhibit 2 revealed that the deceased was about 37 years old and that his clothes were soiled. However, he was in good nutritional status and was about 5ft 7 inches tall. Dr. Olumbe found that the deceased had an incised wound on the right arm pit – extending to the right upper hand. The wound was measuring 14cm and had severed the axillary vessels. The doctor formed the opinion that the cause of death was due to exsanguinations due to chest injury by sharp object. In his evidence, PW4 – Njuguna Mbugua, a farmer, stated that on 31<sup>st</sup> January, 2002 at around 11.00a.m. while he was in his shamba, he also saw Kiarie putting fertilizers on his crops. Consequently, PW4 saw the accused passing through Kiarie’s shamba and stepping on his crops since he was drunk. In response, Kiarie asked him why he was doing that, and the latter responded by getting hold of him and they started fighting. After the fight was stopped, the accused left and went back to the scene. Though the accused agreed to leave

after being prevailed upon, he went back later after another thirty minutes. At that stage, the deceased went to the accused and advised him to stop fighting. However, after a few minutes, PW4 heard Kahura screaming and on looking at him, he observed that he was bleeding. According to PW4, he never saw the accused carrying any weapon and that he also did not know what caused the bleeding on the deceased. On his part, PW5 – PC Fredrick Odera stated that he took over the file from Inspector Kimutai on 8<sup>th</sup> November, 2004 after he was posted to Mbalambala Police Station. In addition to the above, PW4 received the following exhibits from the said officer – report from the Government analyst, trouser of the deceased and a copy of the post mortem form. While going through the file, PW5 found that Inspector Kimutai had visited the scene and recorded statements from witnesses before the file was compiled and forwarded to the Attorney General.

In his defence, Peter Mbugua Muturi (hereinafter referred, to as the accused) testified that on 31<sup>st</sup> January, 2002 he went to his shamba at around 10.00a.m. and after taking tea, the accused proceeded to Mwiki area, Nairobi where he saw more than ten people. Among them, he knew Kiarie who told the group that though he had tried to recruit him as a member of “Mungiki” he had declined. According to the accused, the group later assaulted him for refusing to join their outfit. Thereafter, the accused ran away, though he was later arrested in Mwiki after staying there for two days.

From the evidence on record, it is apparent that the accused assaulted the deceased with a panga on the material day after he was cautioned about stepping on the crops of the latter. The accused was not amused at all by what the deceased had told him. Besides the above, it was also the evidence of PW1 and PW4 that the accused was actually drunk on the material day. However, there was no evidence to suggest that the actions of the accused were planned nor premeditated. Apart from the above, there was no evidence that was adduced to show that the accused had any grudge whatsoever against the deceased to motivate him to commit the offence of murder. Given the above circumstances, I hereby reduce the charge to a cognate and lesser offence of manslaughter, contrary to Section 202 as read with Section 205 of the Penal Code, Cap 63, Laws of Kenya. In the same breadth, I hereby find the accused “guilty” of the offence of manslaughter, contrary to Section 202 as read with Section 205 of the Penal Code. The accused is “**convicted**” accordingly.

**MUGA APONDI,**

**JUDGE.**

**17<sup>TH</sup> SEPTEMBER, 2008**

Judgement read, signed and delivered in open court in the presence of the accused, Mr Ong’ondo State Counsel and Mr Ndung’u Defence Counsel.

**MUGA APONDI,**

**JUDGE.**

**17<sup>TH</sup> SEPTEMBER, 2008**