



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**Criminal Case 31 of 2007**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JOHN NJOROGI MUTHEE.....ACCUSED**

**RULING**

The accused person is charged with the offence of murder contrary to section 203 as read with section 204 of the **Penal Code**. The particulars of the offence state that on the 5<sup>th</sup> day of March 2007 at Kiburuti Village in Nyandarua District within Central Province, murdered Kennedy Ndegwa Wanjiru. Joyce Wanjiru Njeri, PW1 is the mother of the deceased person a young child of about 1<sup>1/2</sup> years old.

On 5<sup>th</sup> march 2007 PW1 testified that they were outside fetching water from a well. The accused person armed with a panga charged at her threatening to cut her up. PW1 ran into the house but in the process the accused person cut her on the finger. She managed to escape and locked herself inside the grandmother's house. She left the grandmother at the well and it is the grandmother who was carrying the child at the back. **Risper Waigwa, PW3** testified that she was drawing water from the well with PW1. She was carrying the deceased on her back. When the accused started charging at them with a panga screaming the accused person had at the time removed all his household goods saying that they belonged to the devil. He ran after PW1. PW3 started screaming and tried to rescue PW1. She removed the baby and threw him to the people who were around to get hold of him. The accused person also cut PW3 with a panga and she ran away. That is when the accused person threw the child in the well. However both PW1 and PW2 are not categorical in their evidence that they saw the accused person drop the child in the well. The other witnesses were equally confusing.

Indeed the prosecution had to declare PW2, PW3 hostile witnesses. Indeed PW2 was committed by the court to prison for seven (7) days for refusing to answer questions. Going by their evidence it is not clear how the deceased was thrown in the well. **Francis Mwangi Gathungu, PW6** testified that he heard the commotion at the home of the accused person. When he went there he saw the accused person chasing people with a panga. It is PW6 who disarmed the accused person and tied him with a rope until he was arrested by **IP Bernard Wamugunda, PW7** from Kipipiri Police Station. PW7 also retrieved the body of the deceased which was taken to the mortuary. The accused person who looked mentally disturbed was arrested and the panga was taken away. However the post-mortem report was not produced by the prosecution. Even the medical examination of the accused person was not produced.

Upon evaluation of the evidence before this court I find the prosecution have not established a prima facie case requiring the accused person to be placed on his defence. The cause of the deceased's death was not established. All the witnesses who testified were none committal that they saw the accused person drop the deceased in the well. The evidence of PW3 was that he threw the child to the people who were around. It is not clear whether that is when the child fell in the well. These people did not come to testify before the court. This case was poorly investigated and during the hearing the prosecution showed no interest in bringing the witnesses in court. They failed to establish a prima facie case and the accused person is hereby discharged of the charge of murder and set at liberty.

**Ruling read and signed on 14<sup>th</sup> November, 2008**

**M. KOOME**

**JUDGE**