



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

Criminal Case 14 of 2003

REPUBLIC.....PROS

VERSUS

JAMES NJUE NJIRU.....ACCUSED

RULING ON SECTION 306

The counsel for the accused has made strong submissions that the prosecution has not shown a prima facie case against the accused. Criminal Procedure Code Section 306 (1) states if the court considers that there is no evidence that the accused committed the offence shall record a finding of not guilty. Or if it considers that there is evidence that the accused person committed the offence shall inform him of his right to defend himself.

The evidence in this case is that the deceased did say to PW1 that he was stabbed by the accused. PW1 informed other witness and it was explained that the name Jimmy was of accused who is called in the information as "James Njue Njiru". Thereafter circumstantial evidence is that there was blood trailing leading from where deceased was lying to the accused house. There was a trail from deceased house to accused house. The accused was at the scene at the time before death. This is a family matter and there is no reason to say that witness had reasons and lies against accused.

It is my finding that there is circumstantial evidence together with the dying declaration all pointing to the accused as the person who committed the offence. I do not enter a plea of not guilty. The accused has right to defend himself, he may give evidence on oath or make unsworn statement and he may call witnesses to testify on his behalf. Accused through counsel, Accused shall give sworn statement and call 2 witnesses.

That is all.

Hearing date for defence case is fixed for 22/1/2008. Accused remanded in custody. Production Order to issue. Assessors to be notified.

Dated this 23rd October, 2007

J. N. KHAMINWA

JUDGE

23/10/2007

Khaminwa –Judge

Njue – Clerk

Mr. Oundo for Accused

Mr. Kimathi – Accused

Assessors present in the morning.

Ruling read in open court.

J. N. KHAMINWA

JUDGE