



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

**Criminal Case 103 of 2005**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JECINTA WAMBOI MWANGI.....1<sup>ST</sup> ACCUSED**

**PATRICK KARANJA MWANGI.....2<sup>ND</sup> ACCUSED**

**JUDGMENT**

Jecinta Wamboi Mwangi (*hereinafter referred to as the 1<sup>st</sup> accused*) and Patrick Karanja Mwangi (*hereinafter referred to as the 2<sup>nd</sup> accused*) were charged with Murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence were that on diverse dates between 10<sup>th</sup> and 26<sup>th</sup> October 2005, at Subukia Valley Farm, Kabazi Location in Nakuru District, the accused persons, jointly with others not before court, murdered Joseph Mwangi Kagwi (*hereinafter referred to as the deceased*). When the accused persons were arraigned before this court, they pleaded not guilty to the charge. The prosecution called a total of twelve witnesses in its bid to establish the charge against the accused persons. After the close of the prosecution's case, the accused persons were put on their defence. They denied that they had in any way been involved with the death of the deceased. Mr. Mosoti made closing submissions urging this court to acquit the accused persons as the prosecution had not established its case to the required standard of proof beyond reasonable doubt. Miss Opati for the State submitted that the prosecution had established, by circumstantial evidence, that it was the accused persons who killed the deceased with malice aforethought. She therefore submitted that this court should find the accused persons guilty as charged.

The facts of this case as can be reconstructed from the evidence adduced by the witnesses in this case, and particularly the prosecution witnesses are as follows; the 1<sup>st</sup> accused got married to the deceased in 1977. They were blessed with twelve children. Among their children is the 2<sup>nd</sup> accused. According to the testimony of the accused persons, the deceased previously had a farm at Gatundu wherein he resided with his family members. The deceased decided to relocate the family to the Kabazi area of Nakuru District. The deceased sold his parcel of land at Gatundu and purchased four parcels of land within Kabazi area. One of the parcels of land was a plot at Kabazi Trading Centre. The three other parcels of land were within Subukia valley farm. The said parcels of land were within the same area. According to PW4 George Kahara Wanjohi, the area Chief of Kabazi location, the relationship between the accused persons and the deceased was not good. He recalled that a year before the incident, the 1<sup>st</sup> accused had reported the deceased to his office. The 1<sup>st</sup> accused claimed then that the deceased had wanted to sell the parcel of land at a Kabazi trading centre without her permission. PW4 recalled that after arbitrating the

issue, the deceased promised that he would not sell the land. PW4 testified that the deceased had complained to him that the 2<sup>nd</sup> accused had threatened to cut him with a panga. During the arbitration of the dispute by PW4, PW6 John Charagu Mbugua, a friend of the deceased was present. He testified that the deceased had requested him to be present when the dispute was being arbitrated upon by the area Chief.

It was apparent that due to the disagreement between the deceased and the accused persons, the deceased decided to relocate from Kabazi trading centre to a house which he had constructed on one of his parcels of land at Subukia valley farm. According to PW3 Simon Mwangi Kihong'o, PW4, PW6 and PW7 Stephen Macharia Njuguna, the deceased used to live alone in his house at his Subukia valley residence. On the 8<sup>th</sup> October 2005, the deceased went to the house of PW7 and told him that he would require his services to assist him construct a store. PW7 was a carpenter by profession. PW7 recalled that the deceased told him that the construction of the said store would commence on the 11<sup>th</sup> October 2005. The deceased therefore requested him avail himself at his residence so that the construction of the store could commence. The deceased similarly spoke to PW6 John Charagu Mbugua on the 8<sup>th</sup> October 2005 and instructed him to go to his house on the 11<sup>th</sup> October 2005 so that he could assist him construct the store.

PW6 recalled that when he saw the deceased on the 8<sup>th</sup> October 2005, it was about 1.00 p.m. The deceased had just arrived from Kabazi trading centre. The deceased was riding on his bicycle. He stopped near the house of PW6 and showed him three title deeds. The deceased told PW6 that he had retrieved the said title deeds from his house at Kabazi because he was apprehensive that the 1<sup>st</sup> accused intended to destroy the titles because of their disagreement. Similarly, PW7 recalled that on the said 8<sup>th</sup> October 2005 the deceased had showed him his title deeds which he had claimed to have retrieved from his house at Kabazi because he had disagreed with the accused persons. PW6 and PW7 recalled that they last saw the deceased alive on the 10<sup>th</sup> October 2005.

On the 11<sup>th</sup> October 2005, at about 7.30 a.m., as PW7 was taking his donkey to graze at the Ministry of Public Works yard next to his farm at Subukia Valley, he saw the 2<sup>nd</sup> accused coming from the direction of the deceased's homestead. The 2<sup>nd</sup> accused was riding a bicycle. The 2<sup>nd</sup> accused waved at him and he responded by waving back. He recalled that the deceased was carrying a luggage on the said bicycle. PW7 later went to the house of the deceased at about 9.30 a.m. in order to commence the construction of the store as earlier planned. He did not find the deceased. He found the house of the deceased locked. Similarly PW6 went to the house of the deceased as he had earlier agreed with the deceased but he was unable to find the deceased. He similarly found the house of the deceased locked. PW6 and PW7 were surprised at the absence of the deceased. PW7 testified that he was unable to comprehend the absence of the deceased because whenever the deceased went on a journey, he would inform him. PW6 had earlier left his tools of trade in the house of the deceased. At that time *i.e.* on the 11<sup>th</sup> October 2005, PW6 and PW7 were not unduly worried as to the absence of the deceased.

On the 18<sup>th</sup> October 2005, after PW6 had checked at the homestead of the deceased for about a week, and having not seen him, he was concerned. This was due to the fact that his tools of trade were still kept at the house of the deceased. PW6 sent his wife PW5 Virginia Muthoni Charagu to go to Kabazi trading centre and inquire from the 1<sup>st</sup> accused the whereabouts of the deceased. On that day, PW5 testified that when she saw the 1<sup>st</sup> accused at her house and made the inquiry, the 1<sup>st</sup> accused told her that the deceased had gone to Kiambu to see his relatives. PW5 passed the information to her husband PW6. On the 19<sup>th</sup> October 2005, PW6 again sent PW5 to inquire from the 1<sup>st</sup> accused if she could open their house at Subukia valley farm so that he could remove his tools of trade. This time, the 1<sup>st</sup> accused told PW5 that the deceased had gone to Mombasa. On two other occasions, when PW5 inquired of the whereabouts of the deceased from the 1<sup>st</sup> accused, the 1<sup>st</sup> accused was evasive. She finally told PW5 that the deceased had gone to a place where he was not going to return soon. PW5 passed this information to her husband.

It is upon receiving this information from his wife, that PW6 became worried. He instructed his wife

to inform PW3. PW3 went to PW4, the area Chief, and told him of the disappearance of the deceased. Similarly, PW6 later on that day *i.e.* on the 24<sup>th</sup> October 2005 told PW4 of his suspicion that the 1<sup>st</sup> accused was somewhat involved in the disappearance of the deceased in view of the bad relationship that existed between the 1<sup>st</sup> accused and the deceased. PW4 knew of the disagreement between the accused persons and the deceased, having previously arbitrated over their disputes. Early on the morning of the 25<sup>th</sup> October 2005, PW4 instructed PW2, the Administration police Cpl. Joel Chege Kimani and PW9 the Administration police Constable Nicholas Salim to accompany him to the house of the 1<sup>st</sup> accused.

PW2, PW4 and PW9 recalled that when they went to the house of the 1<sup>st</sup> accused and inquired of the whereabouts of the deceased, the 1<sup>st</sup> accused told them that the deceased had travelled to Gatundu to collect the balance of the purchase consideration of the land that the deceased had sold at Kiambu District. PW4 was not satisfied with the explanation given by the 1<sup>st</sup> accused in light of the information that he had received from the PW6. He arrested the 1<sup>st</sup> and the 2<sup>nd</sup> accused persons and took them to Kirengero Police Station. At Kirengero Police Station, the accused persons were interviewed by PW8 IP Joseph Kenduiyo, the OCS of the said police station. PW8 was satisfied with the explanation the accused persons gave as regard the absence of the deceased. The accused persons told PW8 that the deceased had travelled to Gatundu to seek the payment of the balance of the purchase consideration of the parcel of land that he had sold. He ordered the accused persons to be released from custody. It was however agreed by the accused persons and PW4 that they would meet the following day at the deceased's parcel of land at Subukia Valley.

On the following day *i.e.* on the 26<sup>th</sup> October 2005 PW4, PW2 and PW9 went to the farm of the deceased at Subukia valley. PW4 mobilised the area residents and mounted a search for the deceased in his farms. He testified that contrary to their agreement with the accused persons on the previous day, it was only the 1<sup>st</sup> accused that went to the Subukia valley farm. The 2<sup>nd</sup> accused was nowhere to be seen. When PW4 inquired from the 1<sup>st</sup> accused where the 2<sup>nd</sup> accused went to, the 1<sup>st</sup> accused told him that the 2<sup>nd</sup> accused had gone to inform his brothers of the disappearance of the deceased. Among the people who were assisting PW4 to search for the deceased in his farm was an assistant chief called Francis Gachanja. PW4 recalled that their search of the deceased in his farm proved fruitless until when the assistant chief persuaded the 1<sup>st</sup> accused to disclose the whereabouts of the deceased. It is then that the 1<sup>st</sup> accused directed an administration police officer to a disused pit within the farm of the deceased. Upon searching the said pit, the body of the deceased was found.

The police were informed. The body of the deceased was removed from the said pit which was said to be about ten feet deep. The body of the deceased was decomposed but he was identified by his clothing and by his deformed small finger. PW12 PC Samuel Kipchumba Too, a Scenes of Crime officer took twelve photographs at the scene. The said photographs were produced in evidence as *prosecution's exhibit No.5*. Upon the discovery of the body of the deceased, the 1<sup>st</sup> accused was arrested and taken to Kirengero Police Station where she was detained pending the conclusion of investigations. The 2<sup>nd</sup> accused was arrested by PW9 on the 28<sup>th</sup> November 2005 when he resurfaced at their home at Kabazi. He was taken to Kirengero Police Station where he was detained pending further investigations.

PW8 and PW11 PC Mutua Malombe testified that when the 2<sup>nd</sup> accused was arrested he offered to take the police to a place in Bahati forest where he alleged to have hidden the title deed belonging to the deceased. PW11 testified that the 2<sup>nd</sup> accused took him to the said forest on the 29<sup>th</sup> November 2005. He recalled that the 2<sup>nd</sup> accused led them to the Bahati forest where they were able to retrieve the title deed which the 2<sup>nd</sup> accused had hidden in the said forest. The said title deed was produced as *prosecution's exhibit No.1*.

After the body of the deceased was retrieved from his farm at Subukia valley, it was taken to the Nakuru Municipal Mortuary. Post-mortem was performed on the 10<sup>th</sup> November 2005 by Dr. Mwita. The body of the deceased was identified by PW1 George Wakagwe Mwangi, the son of the deceased before the post-mortem was performed. He observed that the body of the deceased was extensively decomposed.

There was an obvious depression on the parietal and occipital aspect of the head. There was a depressed skull fracture with evidence of a left extradural haematoma. All the other systems were normal. He formed the opinion that the cause of death of the deceased was head injury secondary to blunt trauma which caused a depressed skull fracture that caused haematoma in pari-occipital region of the head. The post-mortem report was produced on behalf of Dr. Mwita by PW10 Dr. Collins Masolo as *prosecution's exhibit No.2*. The accused persons were seen by Dr. Ashubwe on the 20<sup>th</sup> November 2005 who assessed that the accused persons were mentally fit to stand trial. Their P3 forms were produced by PW10 on behalf of Dr. Ashubwe as *prosecution's exhibits Nos.3 and 4* respectively.

After the close of the prosecution's case, the accused persons were put on their defence. They gave statements and denied that they were involved with the death of the deceased. The 1<sup>st</sup> accused testified that although she had problems with the deceased when he proposed to sell their land at Kabazi, the issue had been resolved by the chief when she reported the incident to the chief. She denied that she had had any problems with the deceased which made the deceased to relocate and reside at his farm at Subukia valley. She testified that the deceased decided to reside at the Subukia valley farm so that he could take care of their crops that were in the farm. She denied that she had given contradictory and misleading information as to the whereabouts of the deceased when she was asked by the chief (PW4) and PW5 Virginia Muthoni Charagu.

On his part, the 2<sup>nd</sup> accused testified that he had not disappeared from the scene after he was released by PW8 at Kirengero Police Station. He testified that he was instructed by his mother (*the 1<sup>st</sup> accused*) to go to Gatundu to look for the deceased. He testified that he went to Gatundu and stayed there for a month looking for the deceased. He was however unsuccessful in his search. When he returned to Kabazi he was surprised when he was arrested by the police. He denied that he had led the police to the scene of the recovery of the title deed at Bahati forest. He denied any involvement with the death of the deceased.

In criminal cases, it is the duty of the prosecution to establish the guilt of an accused person to the required standard of proof beyond reasonable doubt. An accused person is under no obligation to prove his innocence. His duty is only restricted to raising reasonable doubt on the prosecution's case. The onus of proving a criminal case is always on the prosecution and does not shift to an accused person. This court is required to evaluate the evidence that was adduced by the prosecution witnesses and the defence offered by the accused so as to reach its own determination whether or not the prosecution has established the guilt of the accused person.

In the present case, the prosecution relied on circumstantial evidence in its bid to establish that it was the accused persons who killed the deceased. No one saw the deceased being killed. In law, circumstantial evidence was defined by the Court of Appeal in the case of **Mwangi vs Republic [1983] KLR 522** at page 531 as hereunder;

***“An offence like murder can be established by evidence tendered directly proving it or by evidence of facts from which a reasonable person can draw the inference that murder had been committed. It is well established that in a case depending exclusively upon circumstantial evidence the court must, before deciding upon a conviction, find that the inculpatory facts are incompatible with the innocence of the accused and incapable of explanation upon any other hypothesis than that of guilt; Peter Kubuita Paul vs Republic Cr. Appeal No.71 of 1971 (unreported). In Simoni Musoke vs Republic [1958] EA 751 the predecessor of this court said:***

*‘It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference.’ ”*

The prosecution was therefore required to adduce evidence which points to the guilt of the accused persons and to no one else. The prosecution was required to adduce evidence which connected the accused persons with the death of the deceased to the exclusion of any one else.

What was the circumstantial evidence offered by the prosecution in this case? The prosecution adduced evidence that confirmed that the relationship between the accused persons and the deceased was

bad. According to PW4, the area chief of Kabazi location, the 1<sup>st</sup> accused complained to him that the deceased intended to sell one of their properties at Kabazi. This was the property where the 1<sup>st</sup> accused resided with the members of her family. The 1<sup>st</sup> accused was opposed to the said proposed sale. PW4 recalled that he had arbitrated over the issue and resolved it. The deceased told him that he would not sell the said property at Kabazi. Later the deceased complained to him that the 2<sup>nd</sup> accused had threatened to cut him with a panga. This issue appears not to have been resolved.

PW6 and PW7 testified that the deceased told them that his relationship with the accused persons had deteriorated. They testified that the deceased had told them that he was apprehensive that the accused persons would destroy his title deeds in their bid to frustrate him. They recalled that the deceased had shown them title deeds that he had retrieved from his house at Kabazi where the accused persons lived. This was on the 8<sup>th</sup> October 2005, two days before the deceased disappeared. The prosecution therefore succeeded in establishing that there was a motive for the accused persons to cause harm to the deceased.

The prelude to the disappearance of the deceased was the 8<sup>th</sup> October 2005. On that day, the deceased was seen by PW6 and PW7. He had just arrived from Kabazi. The deceased showed the said two witnesses the title deeds that he had retrieved from his house at Kabazi. He spoke to PW6 and PW7 and requested them to assist him construct a store at his farm in Subukia Valley on the 11<sup>th</sup> October 2005. PW6 and PW7 agreed to meet the deceased at his farm on the said 11<sup>th</sup> October 2005 so that they could construct the store.

On the morning of the 11<sup>th</sup> October 2005, PW7 saw the 2<sup>nd</sup> accused riding a bicycle. The 2<sup>nd</sup> accused was carrying something on the said bicycle. PW7 was surprised to see the 2<sup>nd</sup> accused come from the direction of the house of the deceased. This was because PW7 was aware that the relationship between the deceased and the 2<sup>nd</sup> accused was not good. PW7 had not previously seen the 2<sup>nd</sup> accused visit the deceased at his farm at Kabazi. Later on the same day, when PW6 and PW7 went to the farm of the deceased to undertake the construction of the store as they had earlier planned with the deceased, they did not find him. They found the house of the deceased locked up. They were surprised that the deceased was not at home yet he had confirmed to them that he would be waiting for them. PW6 and PW7 went back to their respective homes.

On the 19<sup>th</sup> October 2005, PW6 sent his wife PW5 to the homestead of the 1<sup>st</sup> accused at Kabazi trading centre and to make inquiries as to the whereabouts of the deceased. PW6 was concerned due to the fact that he had left his tools of trade in the house of the deceased. PW5 went to the house of the 1<sup>st</sup> accused on three different occasions and on three separate dates. Each time the 1<sup>st</sup> accused gave a different story as to the whereabouts of the deceased. It was this contradictory explanation by the 1<sup>st</sup> accused of the whereabouts of the deceased that aroused the suspicion of PW6. He made a report of the disappearance of the deceased to the area chief, PW4.

On the 25<sup>th</sup> October 2005, PW4 accompanied by two administrative police officers (*PW2 and PW9*), went to the house of the 1<sup>st</sup> accused at Kabazi. The 1<sup>st</sup> accused told PW4 that the deceased had gone to Gatundu to fetch the balance of the purchase consideration from a person whom he had sold his land. PW4 was not satisfied by this explanation and had the 1<sup>st</sup> accused and 2<sup>nd</sup> accused persons arrested. The two were taken to Kirengero Police Station where they were interviewed by PW8. They were released by PW8 after he was convinced by their explanation of the absence of the deceased. The accused persons had persuaded PW8 that the deceased had gone to Gatundu to collect the balance of the purchase consideration for his land.

PW4 was still not satisfied with the story of the accused persons relating to the disappearance of the deceased. He instructed the accused persons to meet him on the following day *i.e.* 26<sup>th</sup> October 2005, at their farm at Subukia valley. On that day, it was only the 1<sup>st</sup> accused that appeared. The 2<sup>nd</sup> accused was nowhere to be seen. PW4 with the assistance of the members of the public and the two administrative Police officers searched the three farms of the deceased. The search took about four hours. According to

PW2, PW4, PW6 and PW9, it was the 1<sup>st</sup> accused who pointed to the disused pit where the body of the deceased was retrieved. The 1<sup>st</sup> accused pointed to the pit after being persuaded by PW2 to disclose the whereabouts of the body of the deceased. Although the 1<sup>st</sup> accused denied that she had shown the chief the place where the said body was recovered, the evaluation of the evidence clearly shows that it was the 1<sup>st</sup> accused who showed the chief where the body of the deceased had been concealed in the said disused pit.

Another aspect of circumstantial evidence that connects the accused persons with the death of the deceased was the recovery of the title deed in the possession of the 2<sup>nd</sup> accused. PW6 and PW7 testified that on the 8<sup>th</sup> October 2005, the deceased showed them three title deeds which he claimed to have retrieved from his house at Kabazi Trading Centre. After the 2<sup>nd</sup> accused was arrested on the 28<sup>th</sup> November 2005, he led PW11 to a place at Bahati forest where a framed title deed belonging to the deceased was recovered. PW8 and PW11 testified that the said title deed was hidden in the forest, having been covered with a piece of cloth. The title deed was produced as an exhibit in this case. It can therefore be inferred that the 2<sup>nd</sup> accused took the said title deed from the deceased's possession on the 11<sup>th</sup> October 2005 when he was seen by PW7 riding a bicycle from the house of the deceased at Subukia valley.

The 2<sup>nd</sup> accused disappeared on the 26<sup>th</sup> October 2005 from his home when he was requested by PW4 to be available at Subukia Valley farm so that the said farm could be searched. The explanation given by the 2<sup>nd</sup> accused for his absence during this period does not hold. He stated that he had been sent by his mother, the 1<sup>st</sup> accused, to go to Kiambu to look for his father. When he however returned home at Kabazi on the 28<sup>th</sup> November 2005, he told PW9 that he was at Eldoret during the particular period. He even showed PW9 an Eldoret Express Bus ticket.

PW10 confirmed that the deceased died from an injury which was inflicted on his head by a blunt object. The said attack had caused the deceased to sustain a depressed fracture of the skull. On evaluation of the evidence, it was evident that it was only the accused persons who had the motive and the opportunity to kill the deceased. The issue for determination therefore is whether the prosecution established by circumstantial evidence, to the required standard of proof beyond reasonable doubt that it was the accused persons that killed the deceased with malice aforethought. In the present case, the prosecution established that there existed a dispute between the deceased on the one hand and the accused persons on the other.

The dispute arose when the deceased suggested to the 1<sup>st</sup> accused that he had intentions to sell the parcel of land at Kabazi. This was the parcel of land where the 1<sup>st</sup> accused and her children resided. The 1<sup>st</sup> accused was intensely unhappy by the suggestion of the deceased. She reported the deceased to the area chief, PW4. PW4 testified that the 1<sup>st</sup> accused made a complaint to him concerning the intention of the deceased to sell the parcel of land at Kabazi. PW4 recalled that he summoned the deceased to his office. In the presence of the 1<sup>st</sup> accused, the deceased told PW4 that he would not sell his land at Kabazi. According to PW4, he took it that the issue was resolved. The prosecution also established that there existed bad relationship between the deceased and the 2<sup>nd</sup> accused. The deceased had once reported to PW4 that the 2<sup>nd</sup> accused had threatened to cut him with a panga.

It was with this background in mind, that the decision by the deceased to retrieve his title deeds from his house at Kabazi should be evaluated. PW6 and PW7 testified that the deceased showed them title deeds which he (the deceased) claimed to have retrieved from his house at Kabazi because he was apprehensive that the said title deeds would be destroyed by the 1<sup>st</sup> accused. This was on 8<sup>th</sup> October 2005. This court inferred from the evidence adduced by the prosecution that the accused persons became aware that the title deeds were no longer in their possession in their house at Kabazi. The accused persons assumed that the deceased had taken the said title deeds with a view to disposing the said parcel of land at Kabazi. From the circumstantial evidence adduced, it was clear that this was the motive for the brutal killing of the deceased. The deceased was killed on the night of the 10<sup>th</sup> October 2005. This was because the deceased was not seen alive again by his neighbours. The 2<sup>nd</sup> accused was seen riding the bicycle of the

deceased on the morning of the 11<sup>th</sup> October 2005 by PW7. PW7 was surprised to see the 2<sup>nd</sup> accused come from the homestead of the deceased at Subukia valley. This was because PW7 was aware of the bad relationship that existed between the deceased and the 2<sup>nd</sup> accused.

The prosecution adduced evidence which established that it was the 1<sup>st</sup> accused who showed the area chief and the other members of the public who were searching for the deceased in his farm where the body of the deceased was later retrieved. Although the 1<sup>st</sup> accused denied that she showed the area chief where the body of the deceased was, upon evaluating the evidence adduced by the chief (PW4), PW6, PW7 and PW9, this court came to the conclusion that the said witnesses were truthful witnesses. The whereabouts of the body of the deceased was within the special knowledge of the 1<sup>st</sup> accused. This court can only infer that the 1<sup>st</sup> accused knew of the location of the body of the deceased because she participated in dumping of the body the deceased in the said pit. The behaviour of the 1<sup>st</sup> accused during the time the members of the public were searching for the deceased in his farm was not consistent with behaviour of an innocent person. The witnesses who were at the scene testified that the 1<sup>st</sup> accused appeared worried. This fact coupled with the fact that the 1<sup>st</sup> accused had given conflicting stories as to the whereabouts of the deceased to PW5, points to the fact that the 1<sup>st</sup> accused was involved with the death of the deceased.

As regard the 2<sup>nd</sup> accused, he was found in possession of a title deed which was in possession of the deceased on the 8<sup>th</sup> October 2005, two days before he was killed. The said title deed was recovered at Bahati forest by PW11 after the 2<sup>nd</sup> accused had volunteered to take the police officers to the said forest. The location of the said title deed in Bahati forest was within the special knowledge of the 2<sup>nd</sup> accused. Secondly, the behaviour of the 2<sup>nd</sup> accused during the entire period when the deceased disappeared from his homestead was inconsistent with the behaviour of an innocent person. The 2<sup>nd</sup> accused uncharacteristically went to the house of the deceased at Subukia valley when it was known even by the neighbours that the relationship between the 2<sup>nd</sup> accused and the deceased was bad. The 2<sup>nd</sup> accused failed to present himself at the Subukia farm when he was requested by PW4 to be present. Instead, the 2<sup>nd</sup> accused went underground. This court did not believe the story by the 2<sup>nd</sup> accused that during the entire period, he was in Kiambu looking for the deceased. The lack of concern shown by the 2<sup>nd</sup> accused when he became aware that the deceased had disappeared clearly showed that he was aware that his father was dead.

It was for the above reasons, that taking into consideration that the totality of the evidence adduced, I hold that the prosecution established, to the required standard of proof beyond reasonable doubt, that the accused persons killed the deceased with malice aforethought. They are thus convicted of **murder** in accordance with **Section 203** as read with **Section 204** of the **Penal Code**.

**DATED at NAKURU this 16<sup>th</sup> November 2007**

**L. KIMARU**

**JUDGE**