



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

Criminal Case 23 of 2002

AYUB HUSSEIN ACCUSED

VERSUS

REPUBLIC PROSECUTOR

RULING

The accused was arraigned in court on 23rd May 2002 and he was charged with the offence of murder contrary to **Section 204 of the Penal Code**.

The particulars of the charge are that on the 11th day of August, 2000 at Mwariki Estate in Nakuru District of the Rift Valley Province, murdered **Gerald Kamau Muturi**.

The prosecution called three witnesses but the evidence by the third witness, Police constable, **Ali Wambete** (PW 3) is of no evidential value as he was not available for cross-examination. I will therefore evaluate the evidence of **Juliana Anyango** (PW 1). According to PW 1, she was at her house at Mwariki Estate on 11th August 2000 when the wife of the caretaker of the premises where they were tenants stormed into her house and told her that there were people fighting in her house. This witness did not leave her room but about thirty minutes the caretaker came and borrowed a match box to light a lantern. Thereafter this witness told the court that she heard the caretaker and his wife screaming and shouting that the owner of the plot was beaten by Ayub. The owner of the plot was the deceased in this case. PW 1 said she immediately left the premises and travelled to attend a funeral arrangement meeting at another venue. It was not until the next day when she returned home, she learnt that Kamau was killed in the house of the caretaker.

During cross-examination, PW 1 confirmed that the caretaker used to brew illicit drinks and that people used to drink there. She however confirmed that she never witnessed the fighting as she remained in her house.

Charles Mwangi Muturi (PW 2) is the brother of the deceased. On the 12th August 2001, he was called by his wife and informed that the deceased was killed. He identified the body of the deceased at the mortuary when the postmortem was conducted.

The prosecution closed its case at this stage and as I pointed out earlier since the veracity of the evidence of PW 3 was not tested through cross-examination the same is of no consequence.

From the evidence on record it is impossible for the court to know the cause of the deceased death or who caused it. The prosecution failed to call crucial witnesses and in this case, the case was not proved to

the required standard. The evidence of PW 1 does not connect the accused person with the offence. In this case no case has been made out against the accused person sufficiently to require him to make a defence. I accordingly dismiss the charge against the accused person and acquit him of the charge.

It is so ordered.

Ruling read and delivered at Nakuru on 20th July 2006.

MARTHA KOOME

JUDGE

Assessors allowances for today be paid.

MARTHA KOOME

JUDGE