



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

**Criminal Case 35 of 2003**

**REPUBLIC.....**  
**PROSECUTOR**

**VS**

**CLEMENT JUMA MASIKA.....**  
**.....ACCUSED**

**RULING**

The accused person herein, Clement Juma Masika, is before this court facing a charge of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars are to the effect that on the 13<sup>th</sup> and 14<sup>th</sup> day of July 2003 at Makuno village, Kisawayi Sub-location, Mukwe Location in Bungoma District of Western Province murdered Juma Nabarania.

The prosecution closed its case after tendering the evidence of twelve (12) witnesses. Both counsel for the defence and that of the prosecution submitted pursuant to section 306 of the Criminal Procedure Code.

The accused's brother Wanjala Juma (P.W.1) said that he left for Netima Market on 13.7.2003 leaving behind his brother (accused), Mark Mukhwana (P.W6) and the deceased. P.W.1 said the accused later found him in the market and requested him to go for supper in his house. He reluctantly accepted the offer for dinner. P.W.1 said he went to his father's house later in the night only to find him lying on his back outside his house. He was unconscious. He said he took the deceased for medical treatment at Kibabii Health Centre where he unfortunately passed away. P.W1 said that the accused visited the hospital to see the deceased when he was told of his condition. P.W1 said he became suspicious when the accused organized the deceased's funeral single handedly without involving the neighbours. This prompted the area chief Fred Wafula Nabisasi (P.W2) to stop the burial arrangements. P.W2 claimed the accused admitted that he poisoned the deceased. The accused was arrested when he attempted to flee. Mark Mukhwana (P.W.6) said he left the accused with the deceased on 13.7.2003 after eating roasted maize given to them by the deceased. P.W6 said he suspected the accused played a role in poisoning the deceased when he single handedly bought a black cow and a black sheep plus timber in preparation for the deceased funeral. Dr. John Ouma Juma (P.W10) produced the post mortem report which indicated the cause of death was suspected poison to await results of the Government Analyst. Peter Ondiek (P.W11) produced the report of the Government Analyst which indicated that ethanol and methanol were detected in the blood of the deceased at concentrations of 41 and 91 mg per 100 mls respectively. The liver, kidney, stomach and intestines, plate, food and flour were found with no chemically toxic substances. Unfortunately the contents of the Government Analyst report were not incorporated in the post mortem report. It therefore means that the post mortem report did not contain conclusive cause of death. The evidence tendered point to the effect that the deceased was poisoned. The suspicion however is not supported by the evidence. It is therefore evident that the ingredient of actus reus was not established meaning the offence of murder was not proved. In my mind, there is no credible circumstantial evidence to enable this court infer the accused's guilt. This is another case which will obviously fail because of poor investigations. The investigating officer failed to piece up all the evidence to establish the case against the accused person beyond reasonable doubt.

My conclusion is that, I find that the evidence does not incriminate the accused. Consequently, the

accused is acquitted of the offence of murder. He is hereby set free forthwith unless lawfully held.

Dated and delivered this 11th day of September 2006.

**J. K. SERGON**

**JUDGE**

In open court in the presence of Mr. Makali for the accused and Mr. Onderi for the state.

Court: Assessors are hereby discharged but may be summoned for to serve in other cases. They should be paid for today.

**J. K. SERGON**

**JUDGE**