



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAAL CASE 55 OF 2005**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JEREMIAH MAINA KIMAMO.....  
.....ACCUSED**

**RULING**

The accused was charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence were that between 8<sup>th</sup> and 12<sup>th</sup> June 2005, at swift forest in Subukia Location, Nakuru District of the Rift Valley Province he murdered Charles Karoki Mariga, hereinafter referred to as “*the deceased*”. The prosecution called four witnesses and was unable to avail some other prospective ones.

**PW1, Evans Kamau Murunga**, was a power saw operator. He testified that on 8<sup>th</sup> June 2005, at about 9.30 a.m. the deceased and one other person known as Maina went to his home and were carrying a power saw and petrol. They asked him to keep the items for them. They said that the deceased had a sick person in hospital and they wanted to go and see him. The power saw belonged to John Kingori Kioni, PW1’s employer.

On 9<sup>th</sup> June 2005, Mr. Maina went back to the house of PW1 and he told PW1 that he parted with the deceased at Mwangaza Trading centre and he did not know where the deceased was. The witness said that he did not know how the deceased met his death.

**PW2, Johana Tereter** was a forest guard at swift farm. He testified that on 12<sup>th</sup> June 2005, at about 11.00 a.m., he came across a body of a person lying somewhere in the forest. He reported the matter to the Assistant Farm Manager and a report was subsequently made at Subukia Police Station. The police removed the body to Nyahururu mortuary.

**PW3, Michael Maina Mariga**, a meat transporter, was a brother to the deceased. He met the deceased on 7<sup>th</sup> June 2005, and the deceased told him that he would go to split some timber the following day. On 8<sup>th</sup> and 9<sup>th</sup> June 2005, PW3 passed through the home of the deceased but did not get him. He tried to call the deceased on his cell phone but he was not available. On 14<sup>th</sup> June 2005, PW3 decided to go to Nyahururu town to ask the deceased’s workmates if they had seen him. He was informed that the deceased left there with PW4 on 7<sup>th</sup> June 2005. When PW3 contacted PW4 he was informed that the deceased had been sent to Subukia to split timber together with the accused. They began to look for the

deceased and eventually his body was found at Nyahururu District Hospital mortuary. He said that the head of the deceased was black because of acid burns and he PW3 were able to identify the deceased because of the clothes and shoes that he wore.

**John Kingori Kioni (PW4)**, was a timber dealer and had employed the deceased and PW1. On 8<sup>th</sup> June 2005, PW4 and the accused went to Nyahururu town where they met the deceased. PW4 instructed the accused and the deceased to go and work at Subukia. He gave them Kshs.200/- so that they could use Kshs.100/- for transport and give Kshs.100/- to PW1 who had been injured by a power saw. Later in the day, PW4 sent another worker, Joshua Gideon, to deliver petrol for the power saw machine. Joshua returned after sometime and told PW4 that he had not seen the accused and the deceased. Joshua further reported that he met PW1 who told him that the deceased and the accused had left the power saw at the house of PW1. After about three days the deceased's brother called PW4 to ask him if he knew the whereabouts of the deceased and PW4 told him that all he knew was that the deceased had gone to Subukia to split timber.

In cross examination, PW4 said that on 11<sup>th</sup> June 2005, he went to Subukia and talked to PW1 who told him that the deceased and the accused had left the power saw machine at his place.

Apparently the deceased was not willing to work because he thought that PW4 would not pay him since the tree that they were to split for timber was rotten. PW4 said that he was also informed that the deceased had been informed about a sick relative and had decided to go and see him in hospital. The witness said that he did not know how the deceased met his death.

From the evidence that was adduced by the four prosecution witnesses, it is evident that none of them knew what caused the death of the deceased. There was no evidence to connect the accused to the death of the deceased. In my view, the prosecution did not adduce sufficient evidence as would enable this court to place the accused on his defence. I find that a prima facie case has not been established as against the accused. In the case of **RAMANLAL TRAMPAKLAL BHATT VS R [1957] EA 332**, a prima facie case was said to be:-

*“One on which a reasonable tribunal, properly directing its mind to the law and the evidence would convict if no explanation is offered by the defence.”*

Applying the above principle, I find that the prosecution has failed to establish a prima facie case against the accused and consequently I acquit him under Section 210 of the Criminal Procedure Code. He should be set at liberty unless otherwise lawfully held.

DATED, SIGNED and DELIVERED at Nakuru this 17<sup>th</sup> day of November, 2006.

**D. MUSINGA**

JUDGE

Ruling delivered in open court in the presence of the accused, Mr. Nyaramba for the accused and Miss Opati for the stated.

**D. MUSINGA**

JUDGE