



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

Criminal Case 3 of 2003

REPUBLIC PROSECUTOR

VERSUS

GEORGE KIOKO MUATHA ACCUSED

RULING

George Kioko Muatha, is charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code.

The particulars of the charge are that on 2/4/02 at Miambani village, Kyeleni location of Machakos district, he murdered one, Kimatu Mutuku.

He denied the offence.

The prosecution called a total of 6 witnesses.

PW1 Magdalene Kamene Mutuku, and PW2 Benedict Mutuku, are mother and father of the deceased. They recalled that on the evening of 12/4/02 the deceased left their home claiming to be going to collect a radio from the accused George Kioko, which he had bought from the accused. They went to sleep before they saw the deceased return. The next morning, PW1 on noticing that the deceased had not woken up went to knock on his door but found it open. Meanwhile, PW2 had gone to chase wild animals from his farm accompanied by his younger son. While tracking wild animals the young son called him and informed him that he had seen the deceased's body. PW2 went and found his son dead, informed the mother, and later reported to police. PW4 P.C Philip Busienei, accompanied Officer in Charge Donyo Sabuk Police station to the scene where they found the deceased's body hidden in a bush and had a cut on his jaw, neck, head. They arrested 3 suspects and recovered a radio from accused's house which had some stains of blood and a panga from the accused father's home which also had blood stains. He had them taken Government analyst. Later a report was received by the Officer In Charge. He identified the radio and panga in court.

PW3 a relative of the deceased accompanied police to the Matuu Nursing home where postmortem was carried out after he identified the body.

PW5, PC Samson Maliti was on 13/11/02 instructed by the Officer in Charge to escort the body of the deceased to the mortuary and P.C. William Kiplangat, went with deceased's relatives to Matuu Nursing home for purposes of his body being identified.

There was no eye witness to deceased's murder. The accused who is said to have been a very good friend to the deceased is a suspect because the deceased said he was going to collect his radio from the accused's home before he was found murdered the next day. There is no eye witness who saw the deceased with

accused or saw deceased at accused's home on that fateful evening or night. PW4 said that three suspects were arrested but the court has not been told who they were, how they were connected if at all.

A panga and radio were allegedly recovered. PW4 said they had blood stains and were taken to government Chemist for analysis. The said Government analyst report was never produced in evidence nor was the Doctor who performed postmortem called. There is totally no nexus between the said items and the murder or between the accused and the murder. He is a mere suspect and that is not sufficient evidence to call upon him to defend himself.

The court did note that the prosecution did not call all their witnesses despite several adjournments in the matter. It is a murder case which was treated very lightly by the police as a result of which crucial evidence has been left out.

In sum, I find no evidence connecting accused with the offence. He is hereby acquitted of the charge.

R.V. WENDOH

JUDGE

Dated at Machakos this 17th day of August 2005

Read and delivered in the presence of

R.V. WENDOH

JUDGE