



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**CRIMINAL CASE 191 OF 2003**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**JAMES WANJOHI ..... ACCUSED**

**JUDGEMENT**

The Accused herein is charged with an offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. It is alleged against him that on 14th June, 2003 at Kitengela Trading Centre in Kajiado District he murdered Abdullahi Aden.

The State produced Post Mortem Report of Dr. B. Njoroge through P.C. George Munea under the provisions of Section 77 read with Section 33 of the Evidence Act after the application to that effect was not objected to by the Defence counsel and allowed by me after considering the application. As per the Post Mortem report the cause of the death was opined as right sided haemothorax, lung collapse leading to respiratory failure and two gun shot wounds. The body was not opened due to denial thereof as per the religious belief of the deceased who was a muslim by religion. PW.1 Fatuma Mohamed confirmed his death in her testimony. In view of the above referred testimony I find that the Prosecution has sufficiently proved the death of the deceased which was not caused under normal circumstances.

The only witness who named the Accused herein is PW.1 the widow of the deceased. She testified that on the material date at about 6.00 p.m. the Accused came to their house at Kitengela when the deceased was also with her. She specifically stated that there were two persons whom she saw but only the Accused entered the house and the other person was outside whom she did not see. She knew the Accused who used to come to their house to see the deceased. The Deceased went out with the Accused at around 9.30 p.m. and that thaws the last she saw of him. She was later informed at about 8.00 p.m. that the deceased was killed. She mentioned attending an Identification Parade but neither the officer who conducted the parade nor the I.D. Parade form is before the court. In any event evidence of the Identification parade was not relevant because this witness became as the witness knew the Accused.

She also confirmed that neighbour attempted to take the deceased to the hospital and only name which was given as a relative by the deceased was a person who worked as a prison warder, who in any event, is not called as a witness, although it is on record that he accompanied the deceased to the hospital.

Samuel Mwaura (PW.2) is a resident of Kitengela and at about 9.00 p.m. he was manning his wife's shop. He saw a crowd of people outside a shop near his shop. He went there and found a person lying on the floor pleading for help saying '*wananchi, help – I am shot in the chest*' They stopped a vehicle carrying Army Officers checked the person and asked him whether he knew any person. He requested to

call one Yunis who was a Prison Warden. They went back to the prison to pick up Yunis. The vehicle took time to come back and the people requested a matatu driver to take the injured to the hospital. While they were carrying the injured person to the matatu the earlier vehicle arrived and a person called Yunis came out and accompanied the injured to be taken to the hospital. He confirmed during cross-examination that the injured person was asked who shot him but he repeated his injury (shot in chest) and name of Yunis.

James Obuna PW.3 is the shop keeper outside whose shop at Kitengela Trading Centre, the deceased was found lying down. He almost repeated the same person as that of PW.2 upto the time the deceased was accompanied by Yunis in the matatu to be taken to the hospital.

Both of them stated that if the deceased was shot at Kitengela Trading Centre, they would have heard the shots but they did not. Thus the prosecution has been unable to bring forth evidence that the deceased was murdered at Kitengela Trading Centre as per particulars of the information.

The Accused in response stated in short in his unsworn statement that he had gone to the deceased house to give his money back which was given to buy miraa. The deceased came out with him and there he saw another person outside the house. The deceased went to him and the Accused went his way learning behind those two. His statement somehow corresponds to the evidence of PW.1 who had stated that there was another person who stood outside. The Prosecution has totally failed to connect the Accused with that another person.

Moreover there is no evidence as to how, where and by whom the deceased met his death. There is total lack of proof of malice on the part of the Accused. On the other hand there is evidence from independent witnesses (PW.2 and PW.3) that the deceased did not give name of his assailant despite having questioned.

There is insufficient evidence to link the Accused to this tragic death and it shall be dangerous to find against the Accused.

In the premises I enter a finding of not guilty against the Accused, and acquit him of the charge of murder against him.

I further direct that the Accused be released forthwith unless held otherwise as per law.

**Dated and signed at Nairobi this 4th day of October, 2005.**

**K.H. RAWAL**

**JUDGE**

**4.10.2005**