



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

CRIMINAL CASE NO. 20 OF 2002

REPUBLIC.....PROSECUTOR

V E R S U S

1. SAMUEL MWANGOMBE alias NYAWA

2. CHAGA TANGAA alias GARAMA.....ACCUSED

RULING (Under Section 306 CPC)

In the circumstances of this the evidence of Prosecution shows that PW.1 knew Garama Accused. They went to school together. He spoke to her and other people. She showed police Garama's house. Garama had said he was being chased by Maasai who wanted to kill him. This was at night on 2/3/2001. PW.1 heard "mwizi, mwizi." PW.1 knew the 2nd Accused but she did not see him that evening.

PW.2 saw the deceased that night taking drink at Rogers. Patrick (deceased) went away with other boys. PW.2 later also saw Garama and Nyawa the two Accused. He knew them as he was residing with them since 1992. After the two consumed drink at Rogers, the two walked towards the road. After a short time Garama (Accused) came with a knife in his hands. He said "I have done my work, I have finished." Later this witness heard shouts and he went to see what was happening, only to find the body of deceased by roadside near a church. This witness did not see the act. He only imagined and heard of what had happened. PW.3 on 2/3/01 was walking from work when he met deceased and Garama fighting. He separated them. This was about 7 p.m. and escorted deceased where he resided at Jua Kali. He advised deceased not to return to Spaki. On the following day at about 8.00 p.m. he was informed that deceased had been murdered.

Accused Nyawa was also arrested at Jua Kali by public and handed over to police. The Accused were arrested by members of public one of them after expiration of 7 months. Both accused were detained on suspicion that they killed deceased.

The only evidence is of the sight of both that they were at Rogers drinking where it was said Accused Garama had a knife. Again it was reported that same evening Accused Garama was found fighting with deceased and they were separated. And again, when Garama came running from direction of the scene saying there were some Maasais who wanted to kill him. Then there was disappearance for a long period. The incident happened at night.

I have perused the evidence advanced by the State. I am of the view that the evidence is not sufficient to sustain a conviction. The circumstantial evidence does not connect the Accused with the murder of the deceased so as to leave no doubt that they committed the offence.

I therefore enter a finding of Not Guilty.

The Accused shall be set at liberty forthwith unless otherwise lawfully held.

Dated this 21st day of June, 2004.

JOYCE KHAMINWA

J U D G E

The Assessors are now discharged from serving as assessors for a period of 12 months.

Today's allowance be paid.

21/6/04

Khaminwa, J.

Chege – Court Clerk

Mrs. Mwangi – for State

Abubakar holding brief for Mr. Otieno

Mr. Otieno now in court

Accused (2)

Assessors – present

Ruling read in their presence in Open Court.

JOYCE KHAMINWA, J.