



**REPUBLIC OF KENYA**

**IN THE HIGHCOURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**  
**CRIMINAL CASE NO.5 OF 2003**

**PROSECUTOR.....REPUBLIC**

**VERSUS**

**SAMUEL KANGETHE.....ACCUSED**

**JUDGMENT**

The accused SAMUEL KANGETHE MBUGUA is charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the charge state that on the 7th August, 2002 he murdered ROGER KIVUVA MUTISO with others not before the court.

Briefly the facts of the prosecution case are as follows: On the 7th August, 2002 at around 5 a.m. PW1 P.C. Raphael Kinyua while in company of other police officers namely CPL Musyoka PW2, PC Mukeke and PC Kutima were on patrol along Machakos Country Bus Station. They saw the accused running very fast towards the bus station. They suspected him to have committed an offence as that area is normally prone of crime. They managed to arrest him. While they were escorting the accused to the Police car, they met the deceased who reported to them that he had been mugged by 3 men who had assaulted him and robbed him of cash Sh.1,350/= and shoes. That man was the deceased and on seeing the accused he identified him as one of those men who had robbed. They had other suspects in the police car. They took them to Kamukunji Police Station. The deceased was taken to Kenyatta National Hospital for treatment where he died while undergoing treatment. It is not disputed that the deceased died as a result of the injuries he sustained in the cause of the robbery. This was confirmed by the evidence of Dr. Maundu who performed the post mortem on the body of the deceased.

The accused in his defence denied to have mugged the deceased and inflicted injuries on him which caused his death. In his defence he told the court that he is a mechanic and that he works at Muoroto garage. On 6th August 2002 a bus registration number KAL 655B arrived at the Machakos Country Bus Station and it had a mechanical problem. The driver requested him to repair the said bus. He requested PW12 Geoerge Chege another mechanic to assist him in repairing the said bus. The repairs were completed at around 10 p.m. Because it was late and because of crime wave in Nairobi they decided to sleep in that bus together with the turn boy who was around all along as they repaired the bus. At around 5 a.m. he woke up and went to a nearby kiosk to take tea. This was the kiosk of PW11 Michael Mbugua. At the kiosk he met PW13 Kimani who had also come to take tea at the kiosk. After he had taken tea, he left to go back to the bus. On the way he met the police officers who stopped him and asked him to produce his identification card which he had left in the bus. They wanted to search him but he resisted. This was a few metres from the kiosk where he had taken tea. He was arrested and taken to Kamukunji Police Station. He denied that he was running when he met the police. He met the deceased at the police station where he had gone to make a report that he had been mugged. PW13 Kimani in his evidence told the court that he had taken tea with the accused at the kiosk of PW11 Michael Mbugua at around 5 a.m. on the material date. PW11 Mbugua also gave evidence and narrated as how the accused went to his kiosk on the material date at around 5 a.m. and took tea together with other customers. He said his kiosk operates 24 hours a day.

He further told the court that when the accused left his kiosk and while on his way to the bus he witnessed when the accused was struggling with the police a few metres from the kiosk. He also witnessed the arrest of the accused and as he was escorted to the police car. He said he never lost sight of the accused from the time he left his kiosk up to the time he was arrested and taken away by the police. There is also evidence by PW9 Peter who took tea with the accused at the kiosk of PW11.

There is no eye witness who saw the accused mug and assault the deceased. The evidence against the accused is purely circumstantial. Circumstantial evidence means evidence that tends to prove a fact indirectly by proving other events or circumstances which afford a basis for reasonable inference of the occurrence of the fact at issue. The circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but to one proposed to be proved in this case that it was the accused Samwel Kangethe Mbugua who murdered Roger Kivuva Mutiso. In other words there should be a chain of evidence so far complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused person and it must be such as to show that within human probability the act must have been done by the accused.

Before the court can draw the inference of the accused's guilt from circumstantial evidence it is necessary to be sure that there are no other existing circumstances which would weaken or destroy the inference.

After evaluating both the prosecution and defence evidence carefully, it cannot be said that the circumstantial evidence against the accused irresistably points to no other conclusion than the guilty of the accused.

All the 3 assessors returned a verdict of Not Guilty. The prosecution has not proved its case against the accused beyond any reasonable doubt as required by the law and I find him not guilty of the offence of murder as charged and I acquit him.

Dated and delivered at Nairobi this 28th day of July, 2003.

**J.L.A. OSIEMO**

**JUDGE**