



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**CRIMINAL CASE NO. 50 OF 2013**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JAMES GITHAE MURIITHI.....ACCUSED**

**JUDGMENT**

The accused **JAMES GITHAE MURIITHI** faces a charge of **MURDER CONTRARY TO SECTION 203 as read with SECTION 204 OF THE PENAL CODE**. The particulars of the charge were that

*“On the 29<sup>th</sup> day of March, 2013 at Gitare Village in Gilgil District within Nakuru County, jointly with others not before court, murdered **“SOLOMON NJENGA HEME”**”*

The accused pleaded ‘**Not Guilty**’ to the charge. His trial commenced on 14/5/2014 before **Lady Justice Hellen Omondi** who heard the first three (3) witnesses. Following the transfer of the Honourable Judge to Bungoma High Court, I took over the case and heard the remaining two (2) witnesses.

**PW1 SALOME WANJOHI MBURU** told the court that the deceased was her boyfriend with whom she cohabited in Gilgil. **PW1** states that on 29/3/2013 two men whose names she gave as ‘**Peter**’ and ‘**Paul**’ came to search for the deceased claiming that he owed them money.

The deceased was not home at the time so the men left promising to return later, throwing in a threat to beat the deceased if he did not return the money.

The deceased later returned home at 7.00pm. He complained of being unwell. **PW1** gave him pain killers but he did not improve. The next day he was rushed to hospital where he died whilst undergoing treatment.

**PW4 DR. TITUS NGULUNGU** performed the autopsy on the body of the deceased. He noted bruises on the abdomen and buttocks with a perforated intestine. **PW4** concluded that the cause of death was ‘**extensive peritonitis due to perforated gut due to blunt force trauma to the abdomen**’. He filled and signed the post-mortem form which he produced as an exhibit **P.exb1**. From the evidence of the doctor it is clear that the deceased died due to being hit in the abdomen with some great force causing his intestines to rupture.

From the evidence on record this court is at a loss as to why the accused was arraigned in court and charged with the murder of the deceased. Not a single witness identified the accused as the person who assaulted the deceased.

PW1 mentioned two men ‘Peter’ and ‘Paul’ as the ones who came to search for the deceased and threatened to beat him up. Indeed under cross-examination PW1 states categorically that

***“Accused did not beat deceased”***

She names one ‘Mungai’ as the culprit. Under re-examination PW1 is clear that

***“It is Mungai who said he was giving the deceased disciplines. Mungai is not in court”***

No connection is shown to exist between the accused and this ‘Mungai’

PW5 APC GEORGE OLE NTIPO was the arresting officer. He states that he rescued the accused from irate members of the public who were threatening to lynch him. PW5 had nothing of value to add to the case. Under cross-examination he states

***“I do not know if accused committed the murder”***

PW6 PC PAUL NJERU was the investigating officer. One would have thought that his testimony would help shed light on why the accused was charged. Alas this was not the case. PW6 like all the other witnesses had no clue why the accused was in court. His evidence is replete with contradictions and inconsistencies.

PW6 claims that the deceased fiancé PW1 told him that the deceased had allegedly taken money from Githae (accused). He further stated that PW1 said deceased told her that he had been attacked with a stick. PW1 who testified before the court never made any such claims in her evidence. It is not clear where PW6 was getting this information from.

The evidence of PW6 completely unravels under cross-examination by defence counsel. PW6 claims that he relied on what the witnesses told him as a basis to charge the accused. However in the next breath he admits

***“No witness said he saw accused attack the deceased. There is no direct evidence that accused ever physically attacked the deceased. PW1 said she never saw accused at all. It was Peter, Paul and Mungai who attacked the deceased and not the accused”.***

It boggles the mind that with this information PW6 still felt that there existed sufficient grounds to charge the accused. Indeed his testimony served to absolve the accused from any suspicion.

PW6 goes on to state that

***“I charged accused because it was said he had lent deceased 1,000/= I was told the deceased returned the 1,000/=”.***

This reasoning is nothing short of ludicrous. Since when is it a crime to lend person money? Further if deceased had returned the 1,000/= then what possible motive would accused have had to attack him.

Finally under cross examination PW6 states

***“The three men who attacked the deceased have never been traced”***

If the real culprits could not be traced, then why is accused in the dock? It is clear that no meaningful investigations were conducted in this case. The investigating officer just picked on accused because he was unable to get the real culprits. This is a classic example of impunity and harassment by the police to charge a person and subject them to the rigors of a trial when not an iota of evidence exists. I enter a verdict of ‘Not guilty’ and I acquit the accused of this charge of murder. The accused is to be set at liberty forthwith unless he is otherwise lawfully held.

**Dated and delivered in Nakuru this 10<sup>th</sup> day of February, 2017.**

Ms Chemngetich holding brief for Mr. Wambeyi

Mr Chigiti for State

**Maureen A. Odero**

**Judge**