



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

**AT NAKURU**

**CRIMINAL CASE NO. 4 OF 2013**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**SAMUEL EKWAUM ..... ACCUSED**

**RULING**

The accused **SAMUEL EKWAUM** 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 12<sup>th</sup> day of January, 2013 at Silale Village, Mutito Location in Laikipia West District within Laikipia County, jointly with another not before court, murdered FRANCIS TIARUKU NAUKOT”***

The accused pleaded ‘**Not Guilty**’ to the charge. The prosecution called a total of four (4) witnesses in support of their case.

**PW1 JOHN EKAI LOIYET** told the court on 12/1/2013 he was one of the attendees at circumcision party in the village. During the party a fight broke out between the accused and the deceased. **PW1** and others separated the two. Later at 6.30pm **PW1** was on his way to collect a generator when he met one ‘**Adidi**’ bleeding from a cut on his hand. ‘**Adidi**’ said the accused had met him and went on to inform the witness that the accused had also stabbed the deceased in the neck.

Later **PW1** saw the deceased being brought to the Administration Police Camp critically injured with blood pouring out of a wound on his neck. The accused was apprehended by members of public and handed over to the police. The deceased was rushed to Nyahururu General Hospital where he died whilst under-going treatment. Upon completion of police investigations the accused was charged with the offence of murder.

At the close of the prosecution case this court must make a determination as to whether a prima facie case has been established sufficient to warrant calling upon the accused to defend himself. The definition of what constitutes a prima facie case was given in the oft cited case of **RAMANLAL T. BHATT Vs REPUBLIC [1957] E. A 332** where it was held

***“..... it may not be easy to define what is meant by a prima facie case but at least it must mean one on which a reasonable tribunal properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence”***

In this case I am satisfied that both the fact as well as the cause of death of the deceased have been proved beyond reasonable doubt. **PW2 JAPHETH NAUKOT**, and **PW3 JOHN LOKOY**, the father and brother to the deceased respectively both testified that they attended and witnessed the autopsy conducted on the body of the deceased. Both identified the body to the doctor. The two witnesses who knew the deceased well identified him as **‘Francis Naukot’**.

Evidence regarding the cause of death was tendered by **PW4 JOSEPH KARIMI KINYUA** doctor attached to the Nyahururu General Hospital. He produced the post-mortem form in respect of the autopsy performed on the body of the deceased. **P.exb1**. The doctor who conducted the autopsy noted a deep cut wound on the side of the neck. The cause of death was opined to be **“shock due to stab on the right tubular vein”**. From the evidence of **PW4** it is clear that the deceased met his death as a result of the stab to his neck.

Having proved the fact and cause of death the prosecution must go a step further and render evidence to prove that it was the accused who unlawfully stabbed the deceased and caused his death.

There was no eye-witness to the incident in which the deceased sustained his fatal injuries. **PW1** admitted that he did not see the accused stab either deceased or anyone else. **PW1** only met a man whom he refers to as **‘Adidi’** with a wound on his hand. **PW1** has no idea how this **‘Adidi’** was injured.

The witness claimed that **‘Adidi’** told him that it was accused who had stabbed him and went on to claim that accused had also stabbed the deceased in the neck. Given that **PW1** did not personally witness these stabbing incidents this remains hearsay evidence which is not admissible as against the accused.

The person who allegedly witnessed the attack on the deceased was this **‘Adidi’**. He was not called to testify in this case. This was a crucial witness given that he was an eye witness and his failure to testify impacts negatively on the prosecution case. The court was not informed as to whether the prosecution were unable or had difficulty in securing the attendance of this crucial witness. The investigating officer did not testify to explain how or why he linked the accused to this offence.

On the whole the prosecution case is weak. It does not pass muster. Should the accused elect to keep silent in his defence no conviction could be rendered based on the evidence on record. It is a principle in law that the burden of proving a case lies squarely upon the prosecution. At no time does the law ever require that an accused person prove his innocence.

I find that the prosecution have failed to prove a prima facie case in this matter. I therefore 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 in Nakuru this 6<sup>th</sup> day of February 2017.**

Mr. Obutu for accused

**Maureen A. Odero**

**Judge**