



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**CRIMINAL CASE NO. 122 OF 2010**

**REPUBLIC.....RESPONDENT**

**VERSUS**

**EDWIN CHIRCHIR LANGAT.....1<sup>ST</sup> ACCUSED**

**BENARD KIMUTAI RUTO.....2<sup>ND</sup> ACCUSED**

**JUDGMENT**

The two accused persons namely **EDWIN CHIRCHIR LANGAT** (hereinafter referred to as the 1<sup>st</sup> accused) and **BENARD KIMUTAI RUTO** (hereinafter referred to as the 2<sup>nd</sup> accused) are jointly charged with **MURDER CONTRARY TO SECTION 203 as read with SECTION 204 OF THE PENAL CODE**. The particulars of the charge are that:-

***“On the 12<sup>th</sup> day of November, at Lawina Farm, Elburgon in Molo District within Rift Valley Province, jointly with another not before court murdered SAMSON KIPRUTO KORIR”***

Both accused’s pleaded ‘Not Guilty’ to the charge and the trial commenced before **Hon. Lady Justice Helen Omondi** on 28/3/2012. The prosecution called a total of two (2) witnesses in support of their case. **PW1 PARTICK RUTO KIPSANG** was the employer of the deceased. He told the court that on 3/11/2010 he received information that his employee had been killed in Lawina Farm. **PW1** alerted **PW2 JOSEPH KIPKEMOI** the brother of the deceased. **PW1** told court that he later received information that a radio belonging to the deceased was being sold in the Lawina area. He alerted police who recovered the said radio and a mobile phone from the 1<sup>st</sup> accused. Accused 1 led police to the 2<sup>nd</sup> accused and he was also arrested. Both were then charged with the offence of murder.

Following the transfer of the trial Judge to Bungoma High Court, I took over the case. Despite being allowed several adjournments the prosecution were unable to secure the attendance of any other witness. They finally closed their case on 15/12/2015.

In order to prove a charge of murder it requires that the prosecution prove certain key elements of the offence. This includes proof of the fact as well as the cause of death of the deceased. It is necessary to prove the cause of death in order to establish that the incident was a homicide and to rule out the possibility that the deceased may have died of natural causes.

**PW2** the brother of the deceased confirms that he saw the body of the deceased at the mortuary. This proves the fact of death. No evidence whatsoever is tendered to prove the cause of the deceased’s death.

No doctor was called to testify and no post-mortem report was produced. The court therefore has no idea how the deceased met his demise. In the case of **CHENGO NICKSON KALAMA Vs REPUBLIC [2015] eKLR** the Court of Appeal sitting at Malindi held that:-

***“The position then appears to be that save in very exceptional cases ..... it is absolutely necessary that death and the cause thereof be proved beyond reasonable doubt and that can only be achieved by production of medical evidence and in particular, a post mortem examination report of the deceased....”***

Where as in present case no medical evidence is adduced the cause of death remains unproved. This is fatal to a charge of murder.

Aside from failure to prove a crucial ingredient of the charge, no evidence is tendered to allege much less prove that the two accused committed any act or omission which led to the death of the deceased. The two were only arrested upon allegations of having been found with the deceased's property. Indeed the 2<sup>nd</sup> accused was only arrested because the 1<sup>st</sup> accused named him. No item belonging to the deceased was found on the 2<sup>nd</sup> accused. He is entitled to an acquittal.

With regard to the 1<sup>st</sup> accused it is alleged that he was found with a radio and a mobile phone belonging to the deceased. None of the police officers who recovered these items on the 1<sup>st</sup> accused was availed to testify as to the circumstances in which the recovery was made. **PW1** the deceased employer stated that it was he who purchased the radio make Sonatech for the deceased. However **PW2** the brother of deceased states that deceased bought the radio for himself **before** he began working for **PW1**. The evidence of the two witnesses is therefore contradictory as they cannot both be telling the truth.

**PW2** purports to identify a mobile phone make Motorola C113 said to belong to the deceased. **PW2** claims that he could identify the deceased's phone due to a certain mark on it. However **PW2** admits that the mobile phone shown to him in court did not bear any mark. Thus it could not have been the deceased's mobile phone.

The investigating officer did not come to court to testify in order to clarify why he decided to charge the 2 accused's with the murder of the deceased. On the whole the prosecution case is weak, full of material contradictions and lacks cogency. I find that no *prima facie* case is shown to warrant calling upon the two accused's to defend themselves. I enter a verdict of '**Not Guilty**' and I acquit both accused of this charge of murder each accused is to be set at liberty forthwith unless otherwise lawfully held.

Dated in Nakuru this 11<sup>th</sup> day of March 2016.

**Maureen Odera**

**Judge**

**11/3/2016**

Ms Nyakira for State

No Appearance by defence counsel.