



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL CASE NO. 98 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JIMMY MACHARIA KAREITHI.....1<sup>ST</sup> ACCUSED**

**CHRIS MUNENE KILONZO.....2<sup>ND</sup> ACCUSED**

**RULING**

Jimmy Macharia Kareithi, 1<sup>st</sup> accused, and Chris Munene Kilonzo, 2<sup>nd</sup> accused, are charged jointly with others not before the court, with the murder of Michael Githinji Njoroge (deceased) contrary to section 203 as read with section 204 of the Penal Code. The offence is alleged to have been committed on the 9<sup>th</sup> day of October 2014 at Quarry Area in Embakasi within Nairobi County.

The prosecution presented evidence of ten (10) witnesses. In summary, John Mbugua (PW1), an employee of Honour Agencies, in company of his friends Solomon Kamau (PW2), Samuel Ngario, George Ngatia (PW3) and Michael Githinji (deceased) went to High Rider Flats in Kware, Embakasi Nairobi to collect rent from House No. 34 owned the PW1's employer. The tenants in that house had fallen in rent arrears for two months. The time was about 5.20am on 9<sup>th</sup> October 2014. They knocked at the door of House No. 34 but there was no answer. While still at the door, two (2) people approached them and warned them not to demand rent from the occupants of that house because they were their (the two people's) brothers. PW1 and his friends decided to retreat and perhaps seek help from the police. Evidence shows that they did not go to the police. On descending the stairs, they found about twenty (20) people gathered downstairs. This group of people also warned PW1 and his group not to ask for rent from the tenants. PW1 and PW2 left to a different direction while the deceased and Samuel Ngario left together to another direction. PW3 went away alone.

Evidence shows that the deceased and Samuel Ngario were attacked and seriously beaten after walking a short distance from the rental house. The deceased died at the scene of the attack while Samuel sustained serious injuries. He was taken to hospital at Metropolitan and later transferred to Kenyatta National Hospital. He recovered from the injuries. The body of the deceased was taken to the City Mortuary. It was later examined by Dr. Peter Muriuki Ndegwa (PW8), who found multiple bruises and lacerations on the deceased's face and head, contusions on the global scalp, intracranial haemorrhage and signs of intracranial pressure. The opinion of the doctor was that the deceased died as a result of head injuries due to blunt force trauma. The accused persons were arrested at different places on that same day and later charged with this offence.

In determining whether the prosecution has established a *prima facie* case against the accused persons to persuade this court to place the two accused persons on their defences, I have carefully examined and analysed all the evidence of the ten (10) prosecution witnesses. Specifically, I have carefully examined and analysed the evidence of the three witnesses who were at the scene, the evidence of Dr. Ndegwa who examined the body of the deceased and the evidence of Mr. Lawrence Kinywa Muthuri (PW9), the Government Analyst. PW9 examined various exhibits submitted to him, including the clothes worn by the two accused persons, their blood samples and blood sample and finger nail obtained from the deceased. He made his conclusions and testified to his findings. In view of this evidence, I have arrived at a conclusion, and I so find, that Jimmy Macharia Kareithi, the 1<sup>st</sup> accused person, has no case to answer. However, I arrive at a conclusion, and I so find, that Chris Munene Kilonzo, the 2<sup>nd</sup> accused person, has a

case to answer. To avoid prejudicing the case for the prosecution and the 2<sup>nd</sup> accused person, I will withhold my reasons for the findings I have made and give those reasons in my final judgement after taking the defence of the 2<sup>nd</sup> accused person. The 1<sup>st</sup> accused, Jimmy Macharia Kareithi, is hereby acquitted under **Section 306 (1) of the Criminal Procedure Code**. He shall be released from custody, if he is being held in custody, forthwith unless for any other lawful reason he is so held.

Chris Munene Kilonzo, the 2<sup>nd</sup> accused is hereby placed on his defence. In compliance with **Section 306 (2) of the Criminal Procedure Code** he is hereby informed of his rights under that section. Orders shall issue accordingly.

**Dated, signed and delivered in open court this 7<sup>th</sup> day of November 2016.**

**S. N. Mutuku**

**Judge**

**In the presence of:**

Ms Esther Macharia for the prosecution

Mr. Oduor for the accused persons

Both accused persons

Mr. Daniel Ngumbi, court clerk