



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MALINDI**  
**CRIMINAL CASE (MURDER) NO. 11 OF 2013**

**REPUBLIC.....PROSECUTOR**

**-VERSUS-**

**KAHINDI JEFA KATANA ALIAS PAKA.....ACCUSED**

**J U D G M E N T**

1. The accused, **Kahindi Jefa Katana alias Paka** was charged with Murder Contrary to Section 203 as read with Section 204 of the Penal Code. The information states that on 17<sup>th</sup> February, 2013 at Ganda Location Kilifi County he murdered **Justine Chengo Kitsao**. He denied the offence. Mr Katsoleh represented him at the trial.
2. Briefly the prosecution case was that the deceased was a resident of Ganda Village. On the night of 16/2/2013 or early on 17/2/2013 at 1.00am the deceased presented himself at the home of a neighbour **Katana Kalume** (PW3). He was badly injured and bleeding. He sought help and said that the accused, a fellow villager had slashed him. PW2 reported this to the brother of the deceased **Hamisi Kitsao Chengo** (PW1).
3. The two with the help of others organized transport for the deceased to be taken for treatment after reporting to police at 3.40am.

The deceased succumbed to the injuries within hours of hospitalization and treatment.

4. Meanwhile, the accused presented himself at Malindi Police Station 1.30pm on 17/2/2013 to report that he had fought off a thief on his property the previous night at 2.00am and that the thief escaped with injuries. He was subsequently arrested and charged.
5. In his unsworn defence statement, the accused testified that his name was **Kahindi Jefa Kalama**. That on the material date he fought off a thief who tried to steal fish from the nets he had set up in water, presumably the ocean. He reported to police.
6. That the deceased sustained severe cut wound injuries on the material night and died on the next morning is not in dispute. Equally, that the accused reported to police on the following day having fought off a thief on the material night is not in dispute. The court must determine whether the accused is the person who inflicted upon the deceased the injuries which led to his death.
7. The prosecution relied on the dying declarations received by PW3 when he met the deceased on the night when he came to seek help, and to his brother PW1 allegedly on the next day. Reliance was also placed on the Occurrence Book (OB) extract number 28 of 17/2/2013 of a report made at 1300 hours by one **Kahindi Jefa** concerning his night fight with a thief who subsequently escaped

with injuries.

8. To start with, the accused's denial of this report is not serious because he admitted reporting his alleged fight with a thief to police. Chances that the reportee **Kahindi Jefa** named in the report is a different person are very low. There are far too many similarities in terms of particulars between the report and the evidence by witnesses. The name, time, location of the fight and the consequences all seem to point to the same incident described by the prosecution witnesses. PC Silvana Lengaina who received it gave evidence in the trial.
9. The Occurrence Book (OB) provides strong corroboration of the dying declaration made by the deceased to PW3, at least. It seems that at that point, the deceased could speak. And while the incident occurred at night, the circumstances reported by the accused indicate that the fight occurred at the home of the accused. It is unlikely, as PW3 asserted, that the attack took place at the home of the deceased where he lived with his family, who therefore should have been the first to come to his aid.
10. Possibly, the deceased was embarrassed that he had been caught in the act of stealing when he was attacked by the accused. Even PW3 who claimed to have heard the deceased make a second declaration after he came out of surgery said that the deceased could not explain why he was attacked.
11. The injuries sustained by the deceased were severe. In his evidence during the trial, the accused said that the thief was strong and managed to flee after a struggle. This detail appears to correspond with a statement in the OB extract to the effect that the accused and the thief **"fought for a long time but he (thief) finally eloped..... that he have run away with injuries"**. (sic)
12. In my view the facts of this case appear to support a charge of manslaughter rather than murder. I will therefore return a verdict of guilty and convict the accused for the lesser offence of Manslaughter contrary to section 202 as read with section 205 of the Penal Code.

Written and signed at Naivasha this 30<sup>th</sup> January, 2015.

**C. W. MEOLI**

**JUDGE**

Delivered and signed at Malindi this 4<sup>th</sup> day of March, 2015

**SAID J. CHITEMBWE**

**JUDGE**