



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

**CRIMINAL CASE NO. 7 OF 2011**

REPUBLIC.....PROSECUTION

VERSIS

DANIEL MUNGAI NJUI.....1ST ACCUSED

PETER WANDERI NJUI.....2ND ACCUSED

**RULING**

The two accused persons are facing a charge of Murder contrary to Section 203 as read with Section 204 of the Penal Code. Its alleged that between 20th – 22nd March 2011 in Kirinyaga District, Central Province they jointly murdered Edith Wakabari Muthike.

The Prosecution called five (5) witnesses and was unable to procure three more witnesses. After several adjournments with no trace of the 3 witnesses the Prosecution closed its case. The evidence before the Court was purely circumstantial as no witness witnessed the killing.

PW1 the mother of the deceased stated that on 20/3/2011 9.00 p.m she was at home with her two granddaughters v PW2 and W. They were daughters of the deceased. PW2 and Wangoi were outside washing clothes. While in the house 1st and 2nd accused visited them. 1st and 2nd accused are brothers, and 1st accused was the husband of the deceased and the father of the two small children. After a while the deceased arrived home with some rice. She heard the deceased talking to 1st and 2nd accused but she did not bother.

The deceased did not return home that night. Later her body was found in a sack at the river. It was PW2's evidence that indeed 1st and 2nd accused came to PW1's home that night. Their mother (deceased) came and found 1st and 2nd accused there. They i.e. 1st, 2nd accused and deceased went to the gate. They stayed at the gate as they talked. She finished washing and went to the house. She did not see the deceased again. She further said she did not see these people leave. She could not tell if the deceased left with them or not.

The deceased's body was found on 22/3/2011 evening. It had cuts and wounds. PW3 confirmed the cause of death to be multiple injuries including head and brain damage. From the evidence of PW1 and PW2 it is clear that no one saw the deceased leave PW1's home in the company of 1st accused and 2nd accused. PW2 was categorical that there had been no commotion between the deceased and 1st accused that night. She did not also see the accused persons and the deceased leave the gate.

It's not clear if the deceased went with accused persons or if she went to get rice. PW2 had said the deceased had been called to go for rice that night. She had even brought some rice at home that same night. Could it be the accused or those who called her for rice that night who may have committed this

heinous act? The evidence is not sufficient enough for this Court to make a determination incriminating the accused persons. Placing the accused persons on their defence is tantamount to asking them to prove their innocence before the Court. I do find no sufficient evidence to make me place both accused on their defence.

I hereby make a finding of not guilty and acquit both of them under section 306(1) Criminal Procedure Code.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 13TH DAY OF FEBRUARY 2014.**

**H.I. ONG'UDI**

**JUDGE**

**In the presence of:-**

**Mr. Miiri for State**

**Ms. Njeru for Wairimu for 1sst Accused**

**Mr. Ithiga for 2nd Accused**

**Accused**

**Njue CC**