



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 37 OF 2008**

**REPUBLIC ..... PROSECUTOR**

**V E R S U S**

**WILLIAM JUMA ..... ACCUSED**

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

The accused person is charged with the offence of murder contrary to **section 203** as read with **section 204** of the **Penal Code**. The particulars are that the accused *on the 25.7.2008 at Chivika village, Lunyu sub-location, ILeho Location in Kakamega East District within Western Province murdered KASUKU MURARA KUTWA.*

The State called six witnesses. **PW1 DR. DICKSON MCHANA** produced the post mortem report that had been conducted by Dr. Orege at the Kakamega Provincial Hospital on the 29.7.2008. The body had stab wound on the chest near the 5<sup>th</sup> rib. There puncture of the upper right lung and the doctor opined that the cause of death was respiratory failure due to haemopneumo-thorax secondary to sharp penetrating trauma. **PW2 ANASTACIA LUYAYI KUDHOI** was the deceased's wife. On the 25.7.2008 she was at home at about 6.00 p.m. when the village elder went to inform her to follow him. They went to the scene that was on a farm and saw the body of her husband. There was a lot of blood and it was not very far from her home. There is a road in between and it was also near the accused's home. The deceased had a stab wound under the right arm. The police were informed and they went to the scene. The accused was there and he had removed his shirt. They talked to him and they told them to leave him alone. **PW3 JOHNA AKWEYU** is a brother in-law to the deceased. On the 27.7.2008 he went to the Kakamega hospital mortuary and identified the body to the doctor who performed the post mortem.

**PW4 SAMUEL ODIDA** was at home on the 25.7.2008 with the deceased. The deceased left and went to his house. The accused was not at home. He went there and passed them. The deceased saw the accused who was talking to his uncle by the name Daniel. According to PW4 the accused wanted the deceased to move out of the land. The accused told the deceased that he had embarrassed him during the burial of the accused's father. The deceased walked away along the path. The accused entered his house and came out shortly. He went to a borehole and removed his shirt. He went back to his house and came out and sat outside. PW4 was called by his wife and went back home to have tea. After about 15 to 25 minutes he saw people running and was informed that the deceased had been killed. Members of the public arrested the accused. There was a small slasher near the body and it was taken by the police. He did not see the accused stabbing the deceased. PW4 had seen the accused removing his shirt. He is the one who sold land to the accused's father. During the burial of the accused's father the deceased told the accused to take care of the land as his father had died. PW4 has a posho mill in his compound and could not have heard any screaming or noise.

**PW5 APC SGT. JACOB LUKHANDO** was based at the Vihiga DC's office. On the 25.7.2008 he was at the AP post when the report of the deceased's death was made. He went to the scene and found the accused had been arrested by members of the public. He had been beaten and his three grass thatched houses had been torched. They took him to the Vihiga sub-district hospital. There was a panga near the deceased's body and it was taken by police officers from Kakamega. **PW6 CPL JACOB CHEROTICH** was based at the Kakamega police station. He investigated the matter. The incident was reported by the area chief on 25.7.2008 at about 10.30 p.m. They went to the scene and collected the body of the deceased. They found a sack containing firewood on the path and there was a panga under the deceased's head. They took the body and collected the accused who was being held at the local AP post. The

accused had been beaten by members of the public. The accused was later charged with the offence. He interrogated the accused who informed him that the deceased was his friend and they used to fetch firewood together but on that date he was not with him.

The accused was put on his defence. In his sworn testimony he stated that he knew the deceased who was his neighbor. On the 25.7.2008 he left home with his wife and went to prune tea leaves. They worked up to 12.30 p.m. and took the tea leaves to weighing centre in Vihiga which is about 3 kilometers away. He waited for the lorry up to 5.30 p.m. and then he went home. When he reached near his home he saw many people. PW1 and PW2 saw him coming and they pointed at him. He was arrested by members of the public and shortly a police vehicle went to the scene. People ran away but he stayed and he was told to enter the police vehicle. He was taken to the Vihiga AP camp and later to Kakamega police station where he stayed for 23 days before he was charged in court. He had no dispute with the deceased and the deceased was his friend. There is a road in between the deceased's house and his house.

Counsel for the accused submitted that the case was not proved beyond reasonable doubt. No one witnessed the accused stabbing the deceased. The case is based on suspicion.

From the evidence on record it is established that the deceased was stabbed on the 25.7.2008 while carrying a bundle of firewood. The main evidence is that of PW4. He parted ways with the deceased and after about 15 to 25 minutes he got information that the deceased had been stabbed. The police recovered a small panga under the deceased's body. There is no evidence whether it was blood stained or not. There is no evidence that the panga belonged to the accused. According to PW4 the accused was at his home sitting outside while he had removed his shirt. There is no evidence that when the accused was arrested his clothes or body had blood stains. No one saw the accused stabbing the deceased. It is the evidence of PW4 that the deceased was taking food to his child. The evidence is circumstantial. It is clear that after the deceased left PW4 he went to his house and then took a panga and went to get firewood. There is a road between the deceased's house and the accused's house. There is a possibility that someone else stabbed the deceased as he was carrying his firewood. The circumstances of the case do not point directly to the guilt of the accused. The circumstances can be given a different explanation. I do find that the prosecution evidence does not prove the case against the accused beyond reasonable doubt.

In the end I do find that the accused is not guilty of the offence of murder as charged. The accused shall be set at liberty unless otherwise lawfully held.

Delivered, dated and signed at Kakamega this 14<sup>th</sup> day of October 2014

**SAID J. CHITEMBWE**

**J U D G E**