



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CRIMINAL CASE NO. 24 OF 2010**

REPUBLIC.....PROSECUTION

VERSUS

JOHN KAHINDI KARISA.....ACCUSED

**JUDGMENT**

The accused **JOHN KAHINDI KARISA** was charged with the offence of **MURDER CONTRARY TO SECTION 203 as read with SECTION 204 OF THE PENAL CODE**. The particulars of the offence were that:

**“On the night of 6<sup>th</sup> and 7<sup>th</sup> day of September, 2010 at Shanzu Township in Kisauni District within Coast Province, jointly with others not before court murdered SHAKILA MWAJUMA.”**

The accused entered a plea of ‘*Not Guilty*’ to the charge. His trial commenced on 29<sup>th</sup> February, 2012 before **HON. LADY JUSTICE GRACE NZIOKA** who heard the first four (4) witnesses. When the Hon. Judge became unavailable to continue with the case I did hear the last witness. **MR. TARUS** Advocate appeared for the accused. The prosecution was led by **MS. MACHARIA** learned state counsel. The prosecution closed its case on 23<sup>rd</sup> September, 2014. The court must now decide whether on the basis of the evidence adduced a *prima facie* case has been established sufficient to warrant placing the accused onto his defence.

At the outset I wish to state that this hearing has amounted to nothing but a monumental waste of judicial time and energy. The prosecution made absolutely no effort to prove the charge against the accused. Not a single one of the five witnesses called to the stand made any link between the accused and the deceased person.

**PW1 BORA AMISI KOBO** and **PW2 HAMISI KINGI** only talked of having hired out a handcart to a man named “*Kalulu Munyoki*” on 6<sup>th</sup> September, 2010 ostensibly for use to ferry his household goods. The said ‘*Munyoki*’ returned the handcart the following day. Upon return the handcart was found to have bloodstains. Nevertheless **PW1** proceeded to hire out the same handcart to a second man on 7<sup>th</sup> September, 2010. Later their employer known as ‘*Nyundo Mbenza*’ who did not testify in court was arrested by police in possession of the handcart. **PW1** and **PW2** merely spoke of having heard ‘*talk and rumours*’ that the handcart was used to ferry a dead woman. No evidence is adduced to show if this ‘*rumour*’ was indeed true. No evidence is adduced to show that it was the deceased who was ferried in that handcart and more importantly no evidence is adduced to link the accused to the handcart or to the alleged hirer ‘*Munyoki*’. The alleged handcart was not even produced in court as an exhibit.

**PW3 GERRISON OWINO** was an employee of Texas Security Alarms. He testified about his recovery of the body of a half-naked dead woman during his mobile patrols near Shanzu saga stage on the night of 6<sup>th</sup>/7<sup>th</sup> September, 2010. He has no idea who the deceased was, who killed her or who took the body to Shanzu. **PW3** did not know the accused at all.

**PW4 DR. K. N. MANDALYA** was the pathologist who conducted the autopsy on the body of the

deceased. He opined from his examination that the cause of death was '*haemothoraic bleeding due to multiple injury to the chest.*' **PW4** filled and signed the post mortem report which was produced in court as an exhibit **Pexb1**.

The final witness called by the prosecution would have been comical if it did not represent a worrying example of ineptitude and laxity in this matter. **PW5 CORPORAL CHRISTOPHER MAGAIWA** basically had nothing to tell the court concerning this case. He did not investigate the case. All he can offer is that he worked in the same office as the late **PC Cheboi** who was the investigating officer and saw him investigate the case. It is highly unlikely that the mere fact of having worked in the same office as the investigating officer qualifies **PW5** to provide any useful information to the court. The reason why he was summoned to court remains a mystery. It is not as if he was looking over the shoulder of his colleague and can tell the contents of the investigation file. **PW5** names '*Inspector Odhiambo*' as the officer who took over the case from Cheboi. The said Inspector Odhiambo was never called to testify despite the court having allowed the state several adjournments to avail their witnesses. Once again I can only state that this case was a total waste of the court's time. Before a prosecution is mounted the state must ensure that it has all its ducks in a row. No single witness mentioned the accused in his/her evidence. No link is shown to exist between the accused and the deceased. There is not even a suggestion that the accused could have played a role in the murder of the deceased. I find that there is no prima facie evidence against this accused. I enter a verdict of '*Not Guilty*' and I acquit the accused of the charge of murder. Accused is to be set at liberty forthwith unless he is otherwise lawfully held.

**Dated and Delivered in Mombasa this 3<sup>rd</sup> day of December, 2014.**

**M. ODERO**

**JUDGE**