



REPUBLIC OF KENYA

High Court at Machakos

Criminal Case 48 of 2008

REPUBLIC

VERSUS

HARRISON MUTUA WAMBUA APPELLANT

J U D G M E N T

The Accused, **Harrison Mutua Wambua** is charged with the offence of murder contrary to **section 203 and 204** of the **Penal Code**.

The particulars in count I are that on the 10th day of June 2005 at **Mulangoni** village, **Matiliku** Division in **Makueni** District within the **Eastern** Province murdered **Vaati Mutuku**.

The particulars in count II are that on the 10th day of June 2005 at **Mulangoni** village, **Matiliku** Division in **Makueni** District within the **Eastern** Province murdered **Wambua Mutua**.

The prosecution called three witnesses in support of their case.

PW1 **Miriam Kanyiti Muinde** who testified that her late daughter, **Vaati Mutuku** (the deceased in count I) and her three year old son, **Wambua Mutua** (the deceased in count II) had come to her house and had stayed for about one month. The Accused who had been living with the deceased in both count I and II as a family also came to visit and by the material date had stayed for about five days.

After supper the accused and the deceased persons went to sleep in the same house. The following morning the deceased persons were found in bed dead and the Accused was nowhere to be found.

PW2 **Joseph Muathe Muinde**, a relative to the deceased persons only heard about the death and proceeded to the scene.

PW3 **Nicholas Mutuku Nzuki** the father and grandfather to the deceased in count I and II respectively identified the bodies to the doctor who conducted the postmortem.

The prosecution case is half – baked. Essential witnesses e.g. the doctor and the investigating officer were not called to testify. There is no direct evidence to connect the Accused with the offence of murder. The circumstantial evidence on record fails to establish a *prima facie* case against the Accused.

Consequently, the Accused is acquitted under **section 306** of the **Criminal Procedure Code**.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this **9th** day of **May** 2013.

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JUDGE