



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**CRIMINAL CASE NO. 28 OF 2010**

REPUBLIC .....PROSECUTOR

VERSUS

JOSEPH MWANGI MUCHIRI ... 1<sup>ST</sup> ACCUSED

JAMES KARIUKI NJAGI ..... 2<sup>ND</sup> ACCUSED

**R U L I N G**

**JOSEPH MWANGI MUCHIRI & JAMES KARIUKI NJAGI** hereinafter referred to as 1<sup>st</sup> and 2<sup>nd</sup> accused persons are jointly charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars as stated in the information is as follows;

**JOSEPH MWANGI MUCHIRI & JAMES KARIUKI NJAGI: On the 30<sup>th</sup> day of July 2010 at Kamuchege village in Kirinyaga South District within Central Province jointly murdered PETER MURIITHI MUNENE.**

At the close of it's case the Prosecution had called a total of seven (7) witnesses.

PW5 was at the Wang'uru Police Station on 30/7/2010 at 1.30am when he received 1<sup>st</sup> and 2<sup>nd</sup> accused and a woman at the station. Accused 1 had a deep knife cut at the back of his shoulder, while Accused 2 had a knife cut on his left middle finger. They reported that they had been attacked by four (4) men while in their rice fields. The 1<sup>st</sup> and 2<sup>nd</sup> accused gave PW5 a knife used by the attackers. PW1 was asleep on the same night when he was called at the gate. He responded and went and found both accused persons, who told him they had been stabbed. He saw blood on Accused 1's shoulder. As they left Accused 1 told him they had been stabbed by Peter the deceased. The next day he learnt of the deceased's death. PW6 C.I. Kombo received the death report on 31/7/2010. Later in the day PW6 and others re-arrested Accused 2 who made some confessions to him. Unfortunately this was not a formal confession properly taken as is provided for under Evidence Act. PW6 failed to arrange for a confession to be taken from Accused 1.

PW4 and PW5 did not carry out any investigations to establish the circumstances leading to the injuries suffered by Accused 1 and Accused 2 and the fatal injury suffered by the deceased. PW1 said Accused 1 told him it was Peter the deceased who had stabbed both of them. However PW4 said the 1<sup>st</sup> and 2<sup>nd</sup> accused told him they were attacked by four (4) men while they were irrigating their farms. They brought him a knife. Was this knife the one used to assault the accused persons or the one used to kill the deceased? Unfortunately the investigating officer and the Government analyst did not testify. The investigating officer may have told the Court what his investigations established. He elected to absent

himself severally until the Prosecution closed its case without his evidence. The evidence of PW1 cannot form the basis of a conviction against Accused 1 and Accused 2. It is not even what one would define as circumstantial evidence. Without any other evidence to support it, a Court of Law cannot rely on it. I have already dismissed PW6's alleged confession.

PW5's evidence was that Accused 1 and Accused 2 reported a case of assault on their persons. This was never investigated. It is always the duty of the Prosecution to prove its case against an accused person. In this case placing the accused on their defence is tantamount to asking them to prove their innocence. That is not the Law.

After evaluating the Prosecution evidence I find the charge against the accused not established to make me place them on their defence. They are both acquitted under section 306(1) Criminal Procedure Code.

**DATED, DELIVERED AND SIGNED IN OPEN COURT AT EMBU THIS 5<sup>TH</sup> DAY OF JUNE 2013.**

**H.I. ONG'UDI**

**J U D G E**

In the presence of;

**Mr. Wanyonyi for State**

**Mr. Gitonga for Mr. Mugambi for Accused 1**

**M/s Njeru for Accused 2**

**Both Accused**

**Njue – C/c**