



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**CRIMINAL CASE NO. 74 OF 2006**

REPUBLIC.....PROSECUTOR

VERSUS

FRANCIS MUTHURI M'ITONGA.....ACCUSED

LESIIT J

**RULING**

The accused was charged with murder C/S 203 as read with 204 CPC. The particulars are that on 3<sup>rd</sup> August 2006 at Igandene village, Abogeta Location the accused murdered Dorothy Kanini Elias.

The prosecution called a total of five witnesses PW1, one Silas told the court that on the morning of 4<sup>th</sup> August 2006 he came across a dead body on the road near tea bushes as he went to plant tea. He reported the matter to PW2, the area Assistant Chief.

PW2 Zachary reported the matter to the OCS Nkubu Police Station and also accompanied them to the scene. PW2 also gave evidence that the village Elder of the area where deceased was found dead implicated the accused as being the last person seen with the deceased before she died.

PW3 Jane Rima was the Chief of Abogeta Location. The effect of her evidence was that after she got information that the deceased was murdered near the area the accused live. PW3 said that on 7<sup>th</sup> August 2006 she sent her village elders to arrest the accused. The accused was apprehended and taken to her on 15<sup>th</sup> August 2006.

PW4 CIP Bundi was the OCPP Murungurune Police Post. He told the court that he collected the accused from Chief Jane, PW3 on 15<sup>th</sup> August 2006.

PW5 Corporal Samuel Chache was one of the police officers who visited the scene where the body of the deceased was found and collected it from the scene. He also investigated the case. PW5 testified that in the course of investigations he recovered a T-shirt from the house of the accused. He submitted it to Government Chemist who carried out analysis comparing it with the blood from the deceased and accused. The report was PExh.2 while the T-shirt was produced as exhibit.

The Prosecution has to adduce evidence to show that the accused, by some act or omission, with

malice aforethought caused the death of the deceased. The evidence adduced by the prosecution is disjointed. The deceased is alleged to have been last seen alive in the company of the accused. Those who gave that information to PW3 Chief Jane were not called as witnesses. The evidence that accused was with the deceased before her death is mere hearsay which is inadmissible in the circumstances.

The only other evidence against the accused is that he was found with a T-shirt having blood stains on it. Presence of blood on the accused clothing is not without more evidence of any probative value to the prosecution case.

The blood on the T-shirt was subjected to DNA analysis by the Government Chemist Department. The result are contained in Pexh.3. The Government Chemist found that the blood on the T-shirt was for an unknown female. The same officer found that the blood taken from the deceased produced no DNA analysis due to putrefaction. That means the prosecution could not establish that the blood on the T-shirt was from the deceased.

There was other evidence that accused ran away for 2 weeks after this incident. That evidence standing alone is merely that of suspicion as there could be many other explanations upon other hypothesis rather than of the accused guilt. It cannot satisfy the test of pointing unesistibly to the accused guilt.

Having considered the evidence on record in this case, I find that the prosecution has failed to adduce evidence to sufficiently establish a prima facie case against the accused to warrant him to be placed on his defence. In the circumstances I do hereby acquit the accused at this stage under Section 306 of the CPC

Dated, delivered and signed this 3<sup>rd</sup> day of March 2011.

**LESIT J.  
JUDGE**

17<sup>TH</sup> February 2011

Coram:

Lesiit J.....Judge  
Kiriimi.....Court clerk  
Mr. ....For Petitioner  
Mr.....For Objector

Ruling was read, signed and delivered in open court this 3<sup>rd</sup> March 2011.

**LESIT J.  
JUDGE**

Dated Signed and delivered at Meru this ..... day of .....2011

**LESIT, J**

**JUDGE**