



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Criminal Case 116 of 2003**

**REPUBLIC.....APPLICANT**

**-VS-**

**MOHAMMED HASSAN IBRAHIM.....RESPONDENT**

**RULING**

The accused has been charged for the offence of murder, contrary to Section 203 as read with Section 204 of the Penal Code, Cap.63 of the, Laws of Kenya. The particulars of the offence as stated in the information are as follows:

**“On the 16<sup>th</sup> May, 2003 at U-Shop area in Thika District within Central Province murdered John Ngugi Njehia.**

During the hearing of the case, the prosecution called a total of six witnesses. Out of the above, two witnesses – PW5 and PW6 are police officers who were not at the scene when the grisly incident took place. Similarly, PW4 Dr. Kisiangani John Welime only conducted the post-mortem on the body of the deceased. From his evidence, it was apparent that he had just been asked by the police to carry out the post-mortem. Apparently, Dr. Welime did not know anything else about the incident. Both PW1 Duncan Mwaura Waithera and PW3 Mariam Nduta Maorau who were within the vicinity of the scene during the material day, also never saw the accused assaulting the deceased. That apart, the brother of the deceased – PW2 Harrison Kongo Njehia was also not present at the scene. He was just informed by members of the public that his brother was lying in a ditch. That in effect means tht the prosecution failed to produce even one single eye witness to prove the case against the accused.

Given the above evidence, it is apparent that in the event that the accused opts to keep quiet, then no properly constituted tribunal directing its mind judiciously can convict the accused for the offence of murder, contrary to Section 203 as read with Section 204 of the Penal Code. In fact, by the end of the trial, the prosecution totally failed to connect the accused with the offence before the court. The fact that the deceased body was found next to where the accused works does not prove that he was involved in the killing of the deceased. The upshot is that the prosecution has failed to establish a prima facie case against the accused. In pursuance of the above, I hereby enter a finding of **“Not Guilty”** against the accused in compliance with Section 306 (1) of the Criminal Procedure Code. The accused should be released forthwith unless held lawfully. Those are the orders of this Court.

**MUGA APONDI,**

**JUDGE.**

Ruling read signed and delivered in open court in the presence of the accused: Mwongela Defence Counsel and Imbali State Counsel.

**Order:** Interpreter to be paid allowances for two days.

Two Assessors to be paid allowances.

**MUGA APONDI,**

**JUDGE.**

**29<sup>TH</sup> NOVEMBER, 2007.**