

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT VIHIGA**  
**CRIMINAL CASE NO. 11 OF 2021**

**REPUBLIC.....DIRECTOR OF PUBLIC PROSECUTIONS**

**VERSUS**

**SAMUEL JACHULA NAMESA.....ACCUSED**

**RULING**

1. The accused herein faces a murder charge. He is accused of having murdered Johana Bukaya Masua, on 5<sup>th</sup> April 2019. The evidence recorded from the witnesses is to effect that he was last seen with the deceased, as they went on a drinking spree, where both got very drunk, only for the deceased to be found the next morning dead. None of the witnesses saw the accused assault the deceased, or do anything to him that could lead to his death. There exists no circumstantial evidence to link the accused inexorably to the death. The case for the prosecution is, therefore, largely built on suspicion, which is not adequate for the purpose of conviction.
2. PW1, the widow of the deceased, parted with him on 4<sup>th</sup> April 2019, he did not return home that night, and she next saw him the following day, badly hurt. PW2, a *boda boda* operator, was called after the event, to take the deceased to hospital. PW3 was called to go and see the deceased, after the incident. PW4 was the investigating officer, who took charge of the matter after the death was reported; while PW5 was the pathologist, who did the autopsy on the body of the deceased.
3. The investigating officer, who testified as PW4, did not himself have faith in the case. He said that he charged the accused because members of the public arrested him, and the Office of Director of Public Prosecutions recommended the prosecution. It was his case that there was no evidence connecting the accused to the death.
4. In his words, he said:  
*“From investigation I minuted the file to ODPP for advice as there was no evidence connecting the accused to the murder. The ODPP advised that he be taken to court.*

*Apart from members of that village, who burnt all the houses at the home of the suspect, there is no other evidence connecting the accused to the murder in question."*

5. It is my finding and holding, therefore, that the prosecution has not established a *prima facie* case to warrant that the accused person be put on his defence. I find that he has no case to answer, and I accordingly acquit and discharge him. He shall be set free from remand custody, if he is being so held, unless he is otherwise lawfully held.

**RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT  
KAKAMEGA THIS .....24<sup>TH</sup> ..... DAY OF .....MARCH..... 2023**

**WM MUSYOKA  
JUDGE**

**Mr. Erick Zalo, Court Assistant.**

**Ms. Kagai, instructed by the Director of Public Prosecutions, for the Republic.**

**Mr. Mbaka, Advocate for the accused person.**