



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CRIMINAL CASE NO 21 OF 2012**

**(FORMERLY NYERI HC CRIMINAL CASE NO 60 OF 2008)**

REPUBLIC .....PROSECUTOR

VERSUS

1. JULIUS MWANGI NGUGI

2. DAVID NJOROGE KIENGO ALIAS KEI.....ACCUSED

**J U D G M E N T**

1. The two accused persons herein, **Julius Mwangi Ngugi** and **David Njoroge Kiengo** (alias **Kei**) are charged with **murder** contrary to **section 203** as read with **section 204** of the **Penal Code**. It was alleged in the information dated 07/11/2008 that in the night of 24<sup>th</sup> and 25<sup>th</sup> October 2008 at Mbombo Village in Murang'a South District within Central Province, jointly with others not before the court, they murdered one **Joseph Mwati Kariuki** (hereinafter called the **Deceased**).

2. On 27/11/2008 the Accused pleaded not guilty to the charge at Nyeri. Their trial has taken an unacceptably long time for reasons that appear in the record.

3. The Deceased was apparently accosted by a mob of people in the evening of 24/10/2008 who suspected him of being up to no good because he was not a resident of the area and had been seen coming from the home of the 1<sup>st</sup> Accused. He received multiple injuries all over his body from the mob; some of the injuries were so serious that they caused his death. The serious injuries included various cut and depressed fractures to his skull, various broken ribs, serious injuries to some of his internal organs like lungs, spleen and liver, and many other injuries, both serious and minor.

4. The doctor who performed the post mortem examination (PW2) formed the opinion that the Deceased died from the serious injuries to his head and chest area. The multiple injuries were definitely consistent with injuries inflicted by a mob of people upon a hapless victim.

5. The only eye witness called by the prosecution was PW1. He was categorical that the Deceased was never assaulted by anyone in his presence, though he was obviously in pain when he was brought to his (PW1's) home. PW1 left the mob with the Deceased briefly when he went to call his neighbour. When he came back the mob was gone; but the Deceased was lying down grievously injured. PW1 and others assisted to take him to hospital, but he was pronounced dead on arrival.

6. PW1 was also categorical that though he saw the two accused persons (whom he knew) among the mob of people, he never saw them assault the Deceased, and that in fact they were trying to assist the Deceased

by pleading with the mob not to assault him.

7. This latter evidence of PW1 was consistent with the evidence of both accused persons, who testified under oath in their own defence. The 1<sup>st</sup> Accused testified that as he approached his home in the evening of the material day after he left his shamba, he found a mob of people with the Deceased in their custody. They said that the Deceased, who did not belong in the area, was observed coming from his (1<sup>st</sup> Accused's) home. The 1<sup>st</sup> Accused quickly checked and found that his children and all else at home was okay. He then asked the Deceased his name. The Deceased gave his name and stated that he was until recently working in the area. He further stated that there was a person nearby who could vouch for him. So he was escorted to the home of PW1 who stated that indeed he knew the Deceased.

8. The 1<sup>st</sup> Accused further stated that he never lay his hand upon the Deceased, and that indeed he tried to intercede for him so that the mob did not continue to assault him, until he (1<sup>st</sup> Accused) was threatened by the mob, and he therefore ran away.

9. The testimony of the 2<sup>nd</sup> Accused, also given under oath, was also to the effect that though he was present, he never assaulted the Deceased and similarly pleaded with the mob not to assault him, albeit in vain.

10. The only other witness called by the prosecution (PW3) was a police officer, who merely escorted the two accused persons to hospital for medical reports before they were charged. No other witness was called by the prosecution, not even the investigating officer.

11. Obviously the prosecution did not call all the witnesses that they could have called. The only eye witness called did not give any evidence that was adverse to the two accused persons, beyond their presence among the mob. They (accused persons) explained that presence in their defences given under oath.

12. The end result is that the prosecution failed to prove the offence charged against any of the accused persons beyond reasonable doubt. They are hereby acquitted.

13. The accused persons and their sureties are hereby discharged from their obligations under the terms of their bail.

14. It is so ordered.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MURANG'A THIS 13<sup>TH</sup> DAY OF APRIL 2018**

**H P G WAWERU**

**JUDGE**