

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL CASE NO. 63 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

KALELU KAVUSUKI.....1ST ACCUSED

KYAMBI KALELU.....2ND ACCUSED

MUNEENI MUTHENGI.....3RD ACCUSED

MWANGANGI MUTEMI.....4TH ACCUSED

RULING

1. **Kalelu Kavusuki, Kyambi Kalelu, Muneeni Muthengi and Mwangangi Mutemi**, the 1st, 2nd, 3rd and 4th Accused persons respectively are jointly charged with the offence of **Murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code (Cap. 63), Laws of Kenya**. Particulars of the offence are that between the **31st day of October, 2016** and **1st day of November, 2016** at **Kimango Location in Mwingi District** within **Kitui County** they murdered **Julius Kilonzo Muthengi** (Deceased).

2. The Deceased was found dead on the banks of River Mugoo a seasonal river. An autopsy done on his body established his death. The cause of death was stated to be haemorrhage due to multiple injuries that were sustained from blunt trauma. The body was decomposed at the time of examination.

3. Although there was no eye witness to how the Deceased met his death, there was evidence that the Deceased was last seen by his mother, PW1, **Rosalia Kalundu Muthengi** going to the home of the 1st and 2nd Accused persons while in company of the 4th Accused. On the fateful night PW9 **John Musyoki Kalelu** saw the Deceased who was in company of the Accused persons inside their house. He left them in the house as he retired to bed in a different house within the homestead.

4. In the course of investigations the Deceased's panga that he carried as he left home on the material date was recovered from the house. A Muslim hat he was wearing was also found in possession of one of the Accused person's family member.

5. In the circumstances justice would require an explanation from the Accused persons as to what transpired that resulted into the death of the Deceased. I therefore call each one of them to give evidence in their defence pursuant to the provisions of **Section 306(2)** of the **Criminal Procedure Code**.

6. It is so ordered.

Dated, Signed and Delivered at Kitui this 11th day of April, 2018.

L. N. MUTENDE

JUDGE