



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT VOI**

**CRIMINAL CASE NO 15 OF 2014**

**REPUBLIC**

**VERSUS**

**JACOB MBOGHO PAUL**

**JUDGMENT**

**INTRODUCTION**

1. The Accused person herein, Jacob Mbogho Paul, was charged with murder contrary to Section 203 as read with Section 204 of the Penal Code Cap 63 (Laws of Kenya). The particulars of the Chargewere that :-

**“JACOB MBOGHO PAUL: On the night of 18<sup>th</sup> -19<sup>th</sup> August 2013 at Ulawani Village, Chumviniarea within Taita Taveta District within Taita Taveta County, murdered MUTIE MUTUA.”**

2. While sitting at High Court of Kenya, Mombasa, Muya J took the evidence of Beatrice Nthambi Paul (hereinafter referred to as “PW 1”), Mwema Chumwa (hereinafter referred to as “PW 2”) and Kimiriza Kassimu (hereinafter referred to as “PW 3”). The matter was subsequently transferred to the High Court of Kenya, Voi. When the parties appeared before this court on 7<sup>th</sup> October 2015, they requested that the matter proceeds from where it had reached.

3. The State’s filed its Written Submissions relating to the question of whether or not the Accused person had a case to answer on 1<sup>st</sup> September 2016. The same were dated 31<sup>st</sup> August 2016. The Accused person filed his Written Submissions dated 10<sup>th</sup> August 2016 relating to the same question on even date. Both parties had set out in detail the evidence of all the Prosecution witnesses was set out in these Written Submissions.

4. Having considered the said Written Submissions, on 4<sup>th</sup> October 2016, this court found that a *prima facie* case had been established against the Accused person to warrant him being put on his defence. His defence case was heard on 16<sup>th</sup> November 2016.

5. At the conclusion of his case, the State filed its Written Submissions dated 28<sup>th</sup> November 2016 on 5<sup>th</sup> December. On his part, the Accused person filed his Written Submissions dated 13<sup>th</sup> December 2016 on 14<sup>th</sup> December 2016. They also relied on the Written Submissions in which they had addressed the question of whether or not a *prima facie* case had been established, to support their respective cases.

## **THE PROSECUTION'S CASE**

6. The Prosecution called a total of seven (7) witnesses to demonstrate the following ingredients of murder outlined in Section 203 of the Penal Code Cap 63 (Laws of Kenya) :-

**a. Proof of the fact and cause of death of the deceased;**

**b. Proof that the deceased met his death as the (sic) result of an unlawful act or omission on the part of the accused; and**

**c. Proof that the said unlawful act or omission was committed with malice aforethought.**

7. In demonstrating proof of fact and cause of the deceased's death, the Prosecution contended that PW 1 and PW 2 saw the Accused person who was armed with a stick and drunk, beating the deceased, and that he was seen going to his house, wearing closed shoes and going after the deceased.

8. It averred that it had provided proof that the deceased met his death as a result of an unlawful omission on the part of the Accused person. It pointed out that PW 1 had stated that the Accused person did not get along with the deceased, that PW 2 heard the Accused person say that he wanted to punish the deceased and that PW 3 testified that on 18<sup>th</sup> August 2013, he saw the deceased lying on a road and had blood stained clothes.

9. It also submitted that the post mortem examination showed that the deceased had a deep cut on the left forehead, injuries on the face and neck, bruises on both forearms and that internal examination showed significant features in the abdominal cavity. It contended that Dr Amani Chai (hereinafter referred to as "PW 6") had concluded that the cause of death was excessive bleeding from bunt (sic) abdominal injury which could have been caused by a punch fist (sic).

10. It was also its further submission that Elizabeth Waithira Oyiego (hereinafter referred to as "PW 7") tendered in evidence a Report dated 16<sup>th</sup> September 2013 in which she concluded that the DNA profile generated from the blood stains from the jeans which was indicated as of the Accused person matched with the DNA profile generated from the blood sample of the deceased. It added that she confirmed that the blood stained jumper belonging to the Accused matched the deceased's blood.

11. It argued that it could not be held otherwise that the Accused beat the deceased leading to his demise and that the following clearly pointed to his sole involvement in the deceased's death:-

**a. He was seen beating the deceased;**

**b. He was seen with bloody clothes;**

**c. He made utterances of killing the deceased;**

**d. The deceased was found dead just few metres from the Accused and PW 1's house;**

**e. The deceased (sic) swore that if the deceased came back he would finish him; and**

**f. Blood found on the Accused's jumper matched the deceased's blood.**

12. As regards proof of malice aforethought on the part of the Accused person, it reiterated that PW 1 saw the Accused person beating the deceased, although the injuries at that point were not fatal and that PW 2 had heard the Accused saying that he would finish the deceased if he came back to their home. It opined that the fact the deceased was found few metres from the Accused's and PW 1's homestead after being escorted a kilometre away, was clear that the deceased went back to the said homestead.

13. It was categorical that the nature of injuries were consistent with a vicious assault on the deceased

which might have been caused by fists and blunt objects and that the Accused was hell bent on taking the deceased's life as could be discerned from his utterances and actions.

14. It referred this court to the definition of malice aforethought as given in Section 206 of the Penal Code as being:-

**a. An intention to cause the death of or to do grievous harm to any person, whether the person is the person actually killed or not;**

**b. Knowledge that the act or omission causing death will probably cause the death or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous harm is caused or not, or by a wish that it may not be caused.**

15. It was its submission that there were no co-existing circumstances weakening the chain of events it had relied upon, a principle that was addressed in the case of **Musoke vs Republic [1958] EA 715** citing with approval **Teper vs Republic [1952] AL 480** wherein the court therein stated as follows:-

**“It is also necessary before drawing the inference of accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference”**

16. It was its contention that the Accused did not bring any witnesses to support his denial that the clothes that were recovered by police were not his and (sic) that he was wearing different clothes on the date he was arrested. It was therefore its argument that it had proved its case beyond reasonable doubt as the totality of evidence irresistibly proved that the Accused person caused the deceased's death.

#### **THE ACCUSED PERSON'S CASE**

17. The Accused person adduced sworn evidence but did not call any witnesses. He summarised his evidence in his Written Submissions.

18. He told this court that PW 1 was his step-mother and that since the death of his biological mother and father, she had never loved him and that there was a possibility of her having implicated him in the deceased's death. He pointed out that she was the only one who had testified that he beat the deceased on the legs with a stick. He, however, denied ever having beaten the deceased and averred that the clothes that were produced in court were not his as no clothes were removed from him.

19. He submitted that for a conviction to be safely secured, the Prosecution had to prove its case beyond reasonable doubt. He averred that although the deceased died, the cause of his death was in doubt as PW 6's report was not clear as to what caused his death. He pointed out that there were serious injuries to the deceased's head but his head was not opened. It was his contention that there was a possibility that if his head had been opened, the cause of death could have been different.

20. He added that the Prosecution had not proved that he committed an unlawful act because assuming he had beaten the deceased's legs with a stick and not a “rungu” as had been testified by PW 1, then same could not have caused his death. He opined that the deceased could have met his death through the hands of other people after he had been escorted.

21. He further submitted that the Prosecution had not demonstrated any plan or intention to kill the deceased or to cause him grievous harm or knowledge that the act or omission would probably cause the death or grievous harm or any intent to commit a felony and consequently, it had been had not proved malice aforethought on his part.

22. He added that nobody ever connected him directly to the jumper that was produced in court as the blood found therein was found to belong to an unknown male. It was his contention that the evidence of

No 35917 Corporal James Ndereba (hereinafter referred to as “PW 5”) had no value as he could not specifically say the clothes belonged to him having testified that he was given the clothes by No 92543 PC Eric Cheruiyot (hereinafter referred to as “PW 4”).

23. He further argued that it will never be known what caused the deceased’s death as there was no definite conclusion whether the deceased’s injury was caused either by the rupture of the liver or spleen and that in any event, his head was not opened for further examination.

24. It was his submission that the Prosecution evidence was so shallow and did not connect him to the deceased’s death and thus urged this court to acquit him as he could not be called upon to close gaps it had left.

## **LEGAL ANALYSIS**

25. PW 1 testified that she was the Accused person’s mother. She said that the deceased became her lover after her husband died and they had a child out of the said relationship. She stated on 18<sup>th</sup> August 2013, the deceased came to her home but she told him that she had slept. The deceased left. However, he returned at about 2.00 am and she warned him that the Accused person used to come home at odd hours.

26. It was not clear from her evidence how long after she spoke to the deceased that she heard a commotion. All the same, she did hear some commotion outside her house. When she opened the door, she found the Accused and deceased’s persons arguing at the back of her house. She said that she saw the Accused person beating the deceased with a piece of wood, which she took from him.

27. She asked the Accused person to escort the deceased but he refused. She then left to call her neighbour and his wife called Esther. At this time, the deceased was lying on the ground while very drunk. It was her further testimony that the neighbour, wife and the Accused person escorted the deceased to his home at Chumvini “A” which she said was took about an hour long on foot. She pointed out that although the deceased had been hit on the leg, he was walking at the material time. She added that the deceased’s head was bleeding and his shirt was bloodied.

28. She testified that when the three (3) persons came back, they all went to sleep, a fact she re-confirmed in her Re-examination. She said that she learnt of the deceased’s death the following morning from one Mary Mutua.

29. During her Cross-examination, she reiterated that she had told the deceased not to go to her house at 2.00 am or that late and added that although the Accused person had warned the deceased about their relationship, he had never beaten him previously.

30. PW 2 was PW 1’s neighbour. He stated that on 18<sup>th</sup> August 2013, he parted ways with his colleagues at about 12 midnight and as he was going to his house, he heard some commotion in PW 1’s compound. He went to his house and called his wife, Mbithe Musyoki. When they reached PW 1’s homestead, they found the Accused person, who appeared drunk, arguing with the deceased who was also drunk. They went back to their house.

31. After a short while, PW 1 came and called them again and when they got to her compound, they still found the Accused person arguing with the deceased. At the time, he said that the Accused person was holding a stick but the deceased, who they found lying on the ground, had no injuries. He stated that he did not also see the Accused person hit the deceased but that the Accused person said that the deceased was a nuisance and he wanted to punish him. However, he dissuaded him and suggested that they escort the deceased to the main road.

32. He said that although the deceased was drunk, he was able to walk. They escorted him for a kilometre to the road to Chumvini and left him near a Church. Upon their return to PW 1’s homestead at about 2.00 am, the Accused person went to his house but said that he would finish the deceased if he came back to the homestead. It was his evidence that the Accused person removed his open shoes and wore sports

shoes.

33. He said that he did not know if the Accused person left his house after that and confirmed that the Accused person went to sleep. He stated that the deceased was found five hundred (500) metres from PW 1's house at a "bad place".

34. During his Cross-examination, he suggested that the deceased may have gone back towards PW 1's homestead as he was found about forty five (45) metres from the said homestead. Notably, this contradicted his evidence during Examination-in-chief that the deceased was found five hundred (500) metres from PW 1's house.

35. PW 3's evidence was that on 18<sup>th</sup> August 2013, he had come from purchasing medicine when he saw a drunk man lying in a cattle track. On looking closer, he saw that he was breathing heavily and had blood stained clothes. He confirmed that the said person was the deceased. During Cross-examination, he stated that the cattle track was the boundary between PW 1's farm and that of her neighbours.

36. PW 4 said that he was aware of PW 1's and deceased's relationship as the deceased was a businessman at Chumvini Shopping Centre. His evidence was that although he never went to the scene of the murder, he received a report from two (2) people and he went directly to the Accused person's place as he had been told that the deceased had been found near PW 1's house. He escorted the Accused person to Chumvini Police Post and noted that his red top, jumper and his trousers had blood stains. He undressed and locked him up. It was his testimony that he wrapped the clothes and gave them to PW 5 immediately he came back from the scene of crime.

37. During his Cross-examination, he stated that he suspected the Accused person because the deceased was PW 1's boyfriend. In Re-examination, he was emphatic that he never took any other clothes from the Accused person and that when PW 5 came, he was not carrying any other clothes.

38. PW 5 who was the Investigating Officer in this matter confirmed that "they" went to the scene of crime. He said that he was given a pair of jeans and a jumper by PW 4 and also retrieved two (2) shirts that had blood stains at the collar and a trouser from the deceased at the mortuary. He prepared an Exhibit Memo and wrapped the clothes separately and gave the same to PC Kimore (now deceased) who took them to the Government Chemist for analysis. He identified the said clothes in court. During his Cross-examination, he stated that they removed blood from the Accused person but it never reached the Government Chemist for analysis.

39. PW 6 testified that there was bleeding in the abdominal cavity and that although his colleague who did the post mortem examination did not indicate which organ had been ruptured and that he did not open the deceased's head, he agreed with his conclusion that the deceased died as a result of excessive bleeding from a blunt abdominal injury.

40. On her part, PW 7 stated that she analysed the clothes she had been given by PC Kimore (now deceased) and arrived at three (3) conclusions. The first conclusion was that the DNA profile generated from the jeans that had been indicated as having belonging to the Accused person matched the DNA profile that was generated from the deceased's blood sample.

41. The second conclusion was that the DNA profile generated from the deceased's clothes matched the deceased's blood sample. The third conclusion was that the DNA profile generated from the jumper indicated as of the Accused person was for an unknown male. In her Cross-examination, she stated that the match in probability of 1 in  $1.872 \times 10^{21}$  meant that it was only the deceased who could have the blood she had found on his clothes.

42. On his part, the Accused person testified that PW 1 was his step-mother having been married to his father after his biological mother died in 1992. He said that they lived in the same compound. He contended that his relationship with her was poor as she loved her children more than she loved him and his elder sister called Ndasi Rebecca Paul and that she had always wanted to sell the family land and

family goats but he always resisted.

43. It was his testimony that he started seeing the deceased coming to their homestead in 2006 and that he slept at PW 1's home more often than he was away. He said that he had no problem with the deceased.

44. His evidence was that on 18<sup>th</sup> August 2013, he came home at about 11.45 pm after chewing khat with his friends and found the deceased, who was drunk, sitting on a water container outside the kitchen. He said that the deceased told him that he had come back from Tanzania with PW 1, while drunk, but she had locked him outside the house. The deceased asked him to escort him home but because it was dark and late, he went and asked PW 1 to request PW 2, a neighbour who stayed about twenty (20) metres away to accompany them.

45. He was categorical that PW 1 did not come out of her house because he was arguing with the deceased but rather she was the one who had argued with the deceased earlier, the deceased having threatened to kill himself in the house.

46. PW 1 then went and called PW 2 who came with his wife and the three (3) of them escorted the deceased to a place called Chamaembe where the deceased said he was comfortable being left. They returned home. He slept until about 7.00 am and went to collect his donkey cart from Chumvini where he had left it for welding the previous day. As he was awaiting his cart, at about 9.00 am, police officers from Chumvini came and asked him to accompany them to the police post as the deceased had been found dead.

47. He denied that the police officers removed him his clothes and that on the morning he was arrested, he was wearing different clothes from those he had worn on 18<sup>th</sup> August 2013.

48. During his Cross-examination, he stated that he liked the deceased's relationship with PW 1 as he used to assist her with food and school fees and that he was like a father to them but that PW 2 never liked him as they always fought about the boundary. He denied that he said that he would finish the deceased if he came back to their home or that he was drunk on that night as had been averred by PW 2 or that he left the house on that night.

49. It was his evidence that at the time of his arrest, he was wearing an Arsenal T-shirt and ¾ trouser and reiterated that the police did not get any piece of his clothing at the Police Station as PW 5 had stated. He denied being connected to the deceased's death who he said was found about two (2) kilometres from their homestead.

50. There was no dispute that the deceased herein died. It was therefore immaterial whether he had died as a result of a head injury, rupture of spleen or rupture of liver which the Accused person had contended to have been a critical issue. What this court determined really to have been the issue central issue was, who occasioned the deceased the fatal injuries that led to his death as PW 3 had found him still alive on the morning of 18<sup>th</sup> August 2013?

51. The following facts were undisputed:-

- a. THAT the deceased went to PW 1's home twice on the material night.**
- b. THAT PW 1 refused to open the door for the deceased.**
- c. THAT PW 1 was inside her house at the time the deceased and the Accused person met in PW 1's compound.**
- d. THAT the deceased was drunk on the material night.**
- e. THAT PW 1 called PW 2 from his home and he came with his wife.**

**f. THAT it was dangerous for a person to walk on the road at that time of the night without being accompanied.**

**g. THAT PW 2, his wife and the Accused person escorted the deceased to his home until where he felt comfortable.**

**h. THAT PW 2, his wife and the Accused person all returned home thereafter.**

52. There was, however, divergence as to whether or not the Accused person was drunk. Only PW 2 said that the Accused person was drunk on the material night. The Accused person said that he had been chewing khat before he went home and never drank alcohol. PW 1 made no mention of the Accused person having been drunk on that night.

53. Notably, as it was PW 2's word against the Accused person, it was difficult to say with certainty whether or not the Accused person was drunk at the material time. Be that as it may, this was not a contradiction that went to the root of the Prosecution's case as the question of whether or not the deceased died as a result of the Accused person having inflicted him fatal injuries while drunk was not an issue. This court did not therefore attach much weight to this piece of evidence.

54. The more critical and pertinent divergence in the evidence that was placed before this court was whether or not the deceased had injuries following a beating by the Accused person by the time he was being escorted to his home.

55. PW 1 testified that on that material night, the Accused person had hit the deceased's leg with a stick and that the deceased's shirt was blood stained but that the Accused person had never beaten the deceased previously. On his part, PW 2 was categorical that although the Accused person had a stick, the deceased had no injuries. The Accused person denied having beaten the deceased on that night.

56. Several issues emerged out of the evidence that was adduced in respect of the deceased's state by the time he was being escorted by PW 2, his wife and the Accused person. The first was that if PW 1's version was the correct one, then it was difficult to conclude that the deceased died as a result of being hit on the leg or the injury in his head because according to PW 6, the cause of death was said to have been due to excessive bleeding as a result of blunt abdominal injuries. The question that arose was where and when did the deceased sustain the abdominal injuries that were caused by a blunt object as had been testified by PW 6?

57. The next question was, if the deceased was at PW 1's home at about 2.00 am and it was a dark night as she had testified, how then could she see and conclude without a shadow of doubt that the deceased's shirt was bloodied and that his head was bleeding? There was no evidence that the deceased told her that he was bleeding.

58. The question of the lighting conditions at the material time was a relevant and pertinent fact and failure to demonstrate that the lighting conditions were sufficient for PW 1 to have seen a blood stained shirt and bleeding in the deceased's head thus created doubt in the mind of this court as to really whether PW 1 really saw blood on the deceased's head and shirt as she contended.

59. On the other hand, if PW 2's version was the correct one, where and when did the deceased sustain the injuries that led to his death? He had merely stated that the deceased was drunk but was walking on his own at the time they were escorting him to his home. The issue of where and when the deceased was injured was critical because as PW 2 had suggested in his evidence, the deceased must have attempted to come to PW 1's house even after being escorted for over a kilometre.

60. However, there was no evidence that was adduced by the Prosecution to show that the Accused person knew or was likely to have knowledge that the deceased was to come back after being escorted almost a kilometre away and thus way lay him about five hundred (500) metres from their home, a distance that was given by both PW 1 and PW 2 of where the deceased was found in the morning.

61. There was also no evidence that was placed before this court to show that the Accused person left his home after they returned home after escorting the deceased. In fact, PW 1 said that when they returned after escorting the deceased, they slept. On his part, PW 2 said that he did not know if the Accused person left his home again that night. The fact that the Accused person wore sports shoes as was contended by PW 2, if at all, was not necessarily indicative of the fact that the Accused person would leave his home after their return to pursue the deceased.

62. Indeed, there was need for cogent evidence to be adduced to demonstrate that the Accused person did in fact leave his home and occasioned the deceased injuries that led to his death or that he had the opportunity to catch up with the deceased person again after escorting him to a distance of a kilometre away, as per PW 2's account, and returning to his home covering the same kilometre. Notably, PW 1 had said that the deceased's home was about an hour's away from her home.

63. If this court were to accept PW 2's suggestion that the deceased may have tried to come back to PW 1's home, there was a possibility of the deceased having been beaten by unknown persons as the Accused person had argued. Indeed, PW 2 had testified that the deceased was found at a "bad place."

64. It was also not lost to the court that PW 2, his wife and the Accused person had escorted the deceased as it was late, 2.00 am, a time that is known to be unsafe to walk around at night alone and more so for a person who was drunk. Appreciably, the Accused person had also stated that after they left the bar where they were eating khat, they were walking in a group and only separated when he got to his house.

65. Having analysed the said evidence on the possibility of the Accused persons having attacked the deceased after he came home, it was clear that there were glaring gaps that had been left unfilled or unexplained.

66. Turning to the issue of DNA profiles, this court wishes to point out right at the outset that contrary to the Prosecution's assertions in its Written Submissions, PW 7's Report and evidence were clear that the DNA profile found on the jumper that was said to belong to the Accused person was of an unknown male and not that of the Accused person. The Prosecution's submission on this issue was thus totally misleading.

67. The question that arose then out of this piece of evidence were, to whom did the said jumper belong?

68. In his evidence, PW 4 had stated that immediately he was told about the deceased's death, he went to the Accused person's place and escorted him to the Police Post. He had also said that he saw the Accused person at Chumvini Shopping Centre at about 10.10 am. Bearing in mind that the Accused person had stated in his evidence that he was arrested from Chumvini Shopping Centre at 9.00 am, it was not clear whether PW 4 escorted the Accused person from his home or from Chumvini Shopping Centre while he was wearing the said jumper.

69. Be that as it may, PW 7's conclusions that the blood stains found on the said jumper belonged to an unknown male led this court to question where and from whom PW 4 actually retrieved the said jumper from. This unexplained gap in the Prosecution's evidence led this court to question if really the jeans belonged to the Accused person. This court asked itself if there could have been a possibility that the pair of jeans also belonged to the deceased and that is why his blood was found thereon.

70. Accordingly, having analysed the evidence by both the counsel for the Prosecution and counsel for the Accused person, the Written Submissions and case law that they each relied upon, this court came to the conclusion that although the deceased died, it was not clear who caused his death. Further, the Prosecution had failed to adduce evidence to demonstrate the Accused person's involvement in the deceased's death.

71. The Prosecution's submission that the Accused person had the burden of discharging proof of how the deceased's blood found its way to the said pair of jeans was displaced as there were gaps in its evidence that failed to show that the Accused person caused the injuries that led to the deceased's death and further

no evidence was given to show that the Accused person injured the deceased before he was escorted to his home as aforesaid.

72. Indeed, the Accused person denied ever having injured the deceased, a fact that was confirmed by PW 2 thus negating PW 1's contestations that the deceased was bleeding from his head and his shirt was blood stained.

73. Indeed, there was no corroboration that the Accused person had beaten the deceased and that the deceased was wearing bloodied clothes as had been contended by PW 1. If indeed that was the fact, nothing would have been easier than for PW 2 to have confirmed the same as he was present when PW 1 asked that PW 2, his wife and the Accused person escort the deceased.

74. The fact that the Accused person made utterances that he would kill the deceased if he returned to their home was not conclusive evidence that the Accused person killed him as no one saw him injure him. In fact, there was no evidence that the deceased even came back to PW 1's house in the dead of the night or that the Accused person waylaid him on the road. In addition, as was pointed hereinabove, the blood on the jumper did not match the deceased's blood as had been contended by the Prosecution.

75. This case was based solely on circumstantial evidence. Although the cause of the deceased's death was proven as could be seen from the Post mortem Report, there was no proof that he met his death as a result of the Accused person's unlawful act or omission and/or that the unlawful act or omission was committed with malice aforethought as contemplated under the provisions of Section 203 of the Penal Act.

76. On the contrary, as seen hereinabove, there were several other co-existing circumstances that weakened or destroyed the inference of the Accused's guilt. The holding in the case of **Musoke vs Republic**( Supra) was thus not applicable in the circumstances of the case herein.

77. It is unfortunate that a life was lost due to an unnatural act. However, the person who committed the heinous act could not be discerned from the facts that were placed before this court. The doubts created in the mind of this court and the several unfilled gaps led this court to conclude that the Prosecution had not proven its case to the required standard, being, proof beyond reasonable doubts. The burden lay on the Prosecution to fill the gaps and not for the Accused person to explain the said gaps.

## **DISPOSITION**

78. In the premises foregoing, the upshot of this decision was that as the evidence adduced by the Prosecution could not sustain a conviction herein, this court hereby acquits the Accused person under the provisions of Section 322(1) of the Criminal Procedure Code and orders and/or directs that he be set free forthwith unless he be held for any other lawful cause.

79. It is so ordered.

**DATED and DELIVERED at VOI this 23<sup>rd</sup> day of February 2017**

**J. KAMAU**

**JUDGE**

In the presence of:-

Muthami for Accused Person

Miss Anyumba for Republic

Josephat Mavu– Court Clerk

