REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO. 23 OF 2014

LESIIT, J.

REPUBLIC.....PROSECUTION

VERSUS

FRANCIS KAMUNYU KAMAU ALIAS MAYAI.....1ST ACCUSED

PAUL NDAI NDUNGU…….....2ND ACCUSED

JUDGEMENT

1. The accused persons, **FRANCIS KAMUNYU KAMAU ALIAS MAYAI,** hereinafter referred to as the 1st accused, and **PAUL NDAI NDUNGU,** the 2nd accused, are charged with murder contrary to **section 203** as read with **section 204** of the **Penal Code** Cap 63 Laws of Kenya.

2. The particulars of the offence are:

> "**That on the 26th day of December 2013 at about 0900hrs, in Ndenderu Village within Kiambu County, with others not before court murdered Michael Munji Njeri**."

3. The prosecution called a total of 7 witnesses.

4. The summary of the prosecution case was that the deceased person was living with his mother, grandmother, brother, sister and cousins. On the material day, he was at his grandmother's place with his sister, Mary Mumbi, PW1 , his brother Geoffrey Thuo and their cousin, Ann Wanjiku PW2. That morning, a group of 10 people came armed with pangas and sticks. The 1st and 2nd accused and one Kamau, all relatives were said to be in the group. PW2 testified that she was outside the house where the 2nd accused asked her for the deceased menacingly. PW1, who was inside the house testified that the 1st accused came to the door of the house and asked her for the deceased.

5. According to PW2, when the group was told that the deceased was not in, they broke into the grandmother's house by lifting the iron sheets wall above the stone foundation of the house. They then entered the house using the hole they created on the wall, even though the main door was open. They broke the cardboard which divided the rooms in the house and entered the bedroom of PW1 and 2's grandmother, who was also the mother of PW3. PW1 stated that the group broke the

door to the room to reach the deceased. They saw where the deceased was hiding, and forcefully removed him.

6. According to PW1 and 2, the deceased was taken out and beaten thoroughly by the same group. As they beat him, the group was loud and screamed to mimic the deceased's cries of pain. According to the witnesses, the group was so violent that no one dared to save the deceased, or talk to them. The deceased was then frog-marched to a dumpsite, said to be a 15 minutes' walk from his home, according to PW1 and 10 minutes according to PW2.

7. PW1, 2 and others followed the group to the dumpsite. The 1st accused nicknamed Mayai went with a soda bottle and returned with petrol. The witnesses, PW1 and 2, saw a tyre being thrown around the deceased neck. The two also saw the 1st accused pour petrol over the deceased. The group looked for a match box but had none. The 1st accused left briefly and returned with one and he was the one PW1 and 2 saw strike the match which he threw at the deceased thereby lighting up the petrol on the deceased. The deceased was set on fire and he burnt to death. The 1st and 2nd accused persons were later arrested by the police for taking part in assaulting and lynching the deceased. They were charged with the murder of the deceased, jointly with others not before the court.

8. The doctor's finding is documented in the post-mortem report produced as P. exhibit 7. It shows that the deceased's remains had third degree burns on the entire body sparing both feet, and had thermal fractures on the skull and bilateral radio-ulna. Internally, the body had soot in the trachea and bronchial tree and was charred with 102% burns. The cause of death was 102% burns.

9. Both accused were placed on their defence. The 1st accused gave a sworn defense and advanced an alibi. In his defence, the 1st accused said that he woke up as usual on 20th December 2013 at around 6 a.m., and went to work. He told the court that he operated a barber shop which he opened at 7 a.m. and begun attending to his clients. The 1st accused said that at around 8 a.m. he heard noises outside his shop and went out to check what was happening. He said that he did not see anything and decided to return to his shop. Shortly thereafter, the 1st accused said that he heard screams causing some of his clients to run out. When he finished attending to his customer, he went to check and saw a huge crowd of people outside. The 1st accused told the court that he heard people in the crowd saying **"Ni Munyi Wa Njeri amechomwa."** That is the deceased had been burnt. He moved closer and saw the deceased on the ground with 2 tyres placed on top of him with papers and plastics which were in flames. The 1st accused said that he pleaded with the crowd to spare the deceased and take him to the police in vain. He tried to assist the deceased but the crowd prevented him from doing so and even accused him of being his accomplice. Shortly after, the 1st accused said that the police came and took the body away.
10. The 1st accused said that on 1st March the police came to his house and arrested him. He stated that the police also arrested the 2nd accused who they found in the neighborhood. He denied going to the home of the deceased. He also denied setting him on fire as alleged. He also said that he did not take part in any identification parade.

11. The 2nd accused person also gave a sworn defense and advanced an alibi. In his defence he said that he was working in a hotel on the day in question, 26th December 2013. He stated that he was working at the time when he heard screams. He went out and saw people running. The 2nd accused person said that he followed them and reached where there was a crowd pushing and shoving. He pushed his way further in the crowd in order to see what was drawing their attention. The 2nd accused stated that he saw a huge fire and he heard the crowd say; **"It is Munyi Wa Njeri who has been burnt, he shall not steal from people anymore."** The 2nd accused said that when he asked what the deceased had done, he was threatened and could not dare touch the fire. He then returned to his workplace to attend to his customers who were waiting as he was alone. He stated that he never returned to the scene.

12. The 2nd accused stated that police officers came to his place on 1st March 2014 and arrested him and took him to the police station. He denied going to the home of the deceased. He also said that no identification parade was ever conducted on him.

13. The Defense Counsel was Mr. Odour. In his submissions, counsel urged that the prosecution had not proved it case beyond reasonable doubt. He challenged the prosecution evidence for being contradictory especially PW1 and PW2's testimony regarding the events at the scene of crime. The Defense Counsel raised issue with the identification parade allegedly conducted by PW7 and said that since PW1 never talked about the parade, it was never carried out. He further urged the court to take note of the fact that the members used in the ID parades in respect of both accused were the same. Counsel urged the court to take judicial notice that the physical characteristics of the accused persons namely the height and complexion were not the same and that conducting the parades in the manner that PW7 did was against **section 6(iv)(d)** of the **Forces Standing Orders**. The accused persons, he urged, were arrested after two months yet they had not been hiding.

14. Mr. Oduor submitted that there were crucial witnesses who were not called to testify and finally that the defence of the accused persons was not shaken during cross-examination by the prosecution and should be accepted.

15. Counsel for the State Ms. Onunga in her submissions urged that the prosecution had proved its case beyond reasonable doubt and that all the ingredients of murder were proved. PW1 and PW2, she urged, gave evidence that the accused persons were armed as they came with pangas and sticks to the deceased's home which was an indication that they had purposed to commit the offence. Learned Counsel for the State argued that the accused acts of destroying the home of the deceased was an indication that they were determined to commit the murder.

16. Ms. Onunga urged that the 1st and 2nd accused persons were placed at the scene of crime by PW1 and PW2 from his grandmother's home where deceased was carried away to the dumpsite where the deceased was burnt to death. Counsel submitted that PW1 and PW2 knew both accused persons since childhood as they were neighbours and that therefore they were able to identify them during the identification parade having seen them when they came for the deceased at their home. Counsel urged that the offence was committed in broad daylight making identification positive.

17. Regarding the identification parade, Counsel argued that the accused persons did not raise any issue when PW1 testified, and the concern raised was therefore an afterthought. In any event, she urged, PW1 and PW2 confirmed that they were present when the deceased was burnt and even saw the 1staccused person set the deceased on fire. Finally, she submitted that the defense by the 1st accused that he wanted to assist the deceased but was prevented by the public could not hold as the 1st accused had also said in the same breath that he threw a piece of wood that he had into the fire, an act which Counsel urged was intended to cause death as the resulting effect would have been to increase the fire which any person with an intent to assist would not do that.

18. I have carefully considered, analyzed and evaluated the entire evidence adduced by the prosecution and the defense in this case. I have also considered the submissions by both counsels.

19. The 1st and 2nd accused persons are faced with one count of murder contrary to **section 203** as read with **section 204** of the **Penal Code**. **Section 203** of the **Penal Code** provides as follows:

> **"Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder."**

20. Circumstances which constitute malice aforethought are set out under **section 206** of the **Penal Code** in the following terms:

> **"206. Malice aforethought shall be deemed to be established by evidence proving any**

one or more of the following circumstances—

a. **an intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;**
b. **knowledge that the act or omission causing death will probably cause the death of 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 bodily harm is caused or not, or by a wish that it may not be caused;**
c. **an intent to commit a felony;**
d. **an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony."**

21. The burden of proof in this case lies with the prosecution to prove the charge of murder against the accused person beyond any reasonable doubt. The burden lies with the prosecution to prove that the accused persons, acting with one common intention attacked the deceased and eventually set him ablaze causing him burn injuries resulting in his death. The prosecution must adduce evidence to prove that the accused persons had formed the necessary intention to either cause death or grievous harm to the deceased.

22. The prosecution adduced the evidence of two eye witnesses of the incident, PW1 aged 12 years and a sister to the deceased, and PW2 aged 17 years and a cousin to the deceased. It was their evidence that they had just had breakfast when the two accused, one Kamau, one Karanja and others all numbering about ten went to their home. They were rowdy, loud, intimidating and marauding. They were also swearing that they must kill the deceased that day and if not, one of them would die. In that rowdy state, the group is said to have pulled out the deceased from his grandmother's house, frog-matched him into the local market centre where in broad daylight they poured petrol they bought on the deceased body and set him ablaze.

23. The defence raises doubt about identification of the accused persons for the reason that the members of the parade used in both parades for the 1st and 2nd accused were same people. The Defense Counsel raised issue with the identification parade allegedly conducted by PW7 and said that since PW1 never talked about the parade, it was never carried out. He further urged the court to take note of the fact that the members used in the ID parades in respect of both accused were the same. Counsel urged the court to take judicial notice that the physical characteristics of the accused persons namely the height and complexion were not the same and that conducting the parades in the manner that PW7 did was against **section 6(iv)(d)** of the **Forces Standing Orders**.

24. Ms. Onunga learned Prosecution Counsel submitted that PW1 and PW2 knew both accused persons since childhood as they were neighbours and that therefore they were able to identify them during the identification parade having seen them in broad daylight when they came for the deceased at their home. Counsel urged that the offence was committed in broad daylight making identification positive. Regarding the Identification parade, Counsel argued that the accused persons did not raise any issue when PW1 testified, and the concern raised was therefore an afterthought.

25. The incident took place in broad daylight just after the family of the deceased had had breakfast. PW2 described the time as being about 9 a.m. I considered the evidence of PW1 and 2 that the deceased was frog matched a distance of 10 to 15 minutes walk, after tying his hands, and while beating him and screaming at the same time. PW1 and 2 stated clearly that they followed the deceased and the group from home up to the point the deceased was set ablaze. That was a long distance and the circumstances of light were condusive for a correct identification of the accused. I am also satisfied that the two eye witnesses had sufficient time to see and recognize the accused persons. Having been neigbours and having known them since their child hood, I am satisfied that PW1 and 2 positively identified that two accused as two among a group of ten who committed the offence by setting the deceased on fire.

26. The purpose of an identification parade is to aid in investigations in order to determine who committed an offence. The witnesses who purport to have identified a suspect are taken through a process of identifying the suspect from a group of people who are carefully selected by a Parade Officer, usually a senior police officer. In order to carry out a proper identification parade, the witnesses should be asked to describe the suspect they claim they are able to identify. It would be superfluous to take a witness through an ID parade if the suspect to be identified was a person they knew well before the incident.

27. In **Kinyua and another Vs. Republic Criminal Appeal No. 11 of 2013 (Nyeri)** the Court of Appeal held:

> **"The law is settled, that in general, identification of a suspect who was a stranger at the time the offence was committed, which was not followed by the witness describing the suspect to the police who would organize a properly conducted identification parade at which the witness is afforded an opportunity to affirm his identification by pointing out the suspect, is a dock identification which in some cases is regarded is worthless."**

28. It is very clear that from the evidence in this case, it was wholly unnecessary to conduct ID parades. The two eye witnesses testified that they both knew the accused persons before the incident. PW1, Mary Wambui was a 12 year old girl in class six and the deceased younger sister. PW1 testified that she lived with her siblings, Geoffrey Thuo, and the deceased, her grandmother Mary Wanjiru and her mother Joyce Njeri. She testified that their home was very close to the homes of the accused who she said she knew since her childhood. She said that the two were related.
29. PW2, Ann Wanjiku was the deceased's cousin. She said that she lived with PW1, her grandmother, the deceased, Geofrey Thuo and Joyce Njeri (PW3) in a two-roomed house. PW2 testified that she knew both the 1st and 2nd accused persons who were not only their neighbours but also came from the same family. She said she had known them since childhood and both were related as cousins. PW2 said that the 1st accused lived a distance of 10 minutes' walk from where they lived. In the circumstances, it was not necessary for the investigating officer to require an ID parade for PW1 and 2 to identify the accused.
30. What this court has to determine is whether the identification of the two accused persons was free of any possibility of error or mistake. In the Court of Appeal case of **Wamunga Vs. Republic 1989 eKLR,** it was held:

> **"What we have to decide now is whether that evidence was reliable and free from possibility of error so as to find a secure basis for the conviction of the appellant. Evidence of visual identification in criminal cases can bring about miscarriage of justice and it is of vital importance that such evidence is examined carefully to minimize this danger.**
>
> **Whenever the case against a defendant depends wholly or to a great extent on the correctness of one or more identifications of the accused which he alleges to be mistaken the court must warn itself of the special need for caution before convicting the defendant in reliance on the correctness of the identification.**
>
> **..it is trite law that where the only evidence against a defendant is evidence of identification or recognition, a trial court is enjoined to examine such evidence carefully and to be satisfied that the circumstances of identification were favourable and free from possibility of error before it can safely make it the basis of a conviction."**

31. The evidence of identification by PW1 and PW2 is therefore that of recognition as they knew the two accused before and could therefore recognize them. The incident took place in the morning hours. It also took some time because of the breakage the group carried out at the deceased home

in their effort of flashing him out of his grandmother's bedroom. Thereafter they frog-matched the deceased in the street leading him to the local market place. They then sought for petrol and matchsticks before setting him on fire.

32. The circumstances of identification were good and conducive for a correct and positive identification of the accused as it was broad day light when the incident occurred and the witnesses had a clear and unobstructed view of those who carried out the heinous act. I am also satisfied from the evidence that the incident took some time and it involved walking by the perpetrators of the offence, the deceased, his family and other members of the public. The witnesses had sufficient time to see and identify the accused persons. I am satisfied that the evidence of identification by PW1 and 2 against both accused was safe and free from any possibility of error or mistake. I accept it as correct and conclusive against the accused persons.
33. The defence raised issue with failure by the prosecution to carry out proper investigations and bring witnesses.
34. PW7, CPL Lepish Mutore was the Investigating Officer. PW7 only went as far as taking statements 3 weeks after the incident from the mother of the deceased, Geofrey Thuo, PW1 and PW2. He also had photographs of the scene taken and drew a sketch plan of the scene. There were no attempts made to record statements from other witnesses or members of the public whom they found at the scene of crime at the time the offence occurred. This was a manifest failure on their part. PW7 also talked of one Kennedy Kamau Ndungu who called and reported the incident but was not called to testify ostensibly because he could not be reached on his phone even to make a statement.
35. The upshot of this is that the investigations done were shoddy. The police dragged their feet before taking any action, which action was started almost a month after the incident. The accused persons were arrested two months after the event. That notwithstanding, the important thing was for the evidence adduced to meet a certain threshold as set out in the celebrated case of **BUKENYA & OTHERS VERSUS UGANDA 1972 EA 549** where the court held:

> **"The prosecution must make available all witnesses necessary to establish the truth even if their evidence may be inconsistent.**
>
> **Where the evidence called is barely adequate, the Court may infer that the evidence of uncalled witnesses would have tended to be adverse to the prosecution."**

36. I am satisfied that the threshold was reached and that the prosecution's duty to call evidence that is sufficient to establish the truth was met.

37. The defence raised issue with the evidence of witnesses stating that it was contradictory. The nature of the contradiction was not explained. Counsel for the State Ms. Onunga on her part urged that the Prosecution had proved its case beyond reasonable doubt and that all the ingredients of murder were proved. PW1 and PW2 she urged gave evidence that the accused persons were armed as they came with pangas and sticks to the deceased home which was an indication that they had purposed to commit the offence. Learned Counsel for the State argued that the accused acts of destroying the home of the deceased was an indication that they were determined to commit the murder.

38. Ms Onunga urged that the 1st and 2nd accused persons were placed at the scene of crime by PW1 and PW2 from his grandmother's home where deceased was carried away to the dumpsite where the deceased was burnt to death. In any event, she urged, PW1 and PW2 confirmed that they were present when the deceased was burnt and even saw the 1st accused person set the deceased on fire.

39. As already stated the defence was not specific regarding contradictions in the prosecution evidence and it is therefore difficult to know exactly what it is they were complaining about. However, I did note variations in the prosecution evidence. For instance while PW1 said that the door to her grandmother's bedroom was what she saw the marauding men break, PW2 saw them lifting the iron sheets that formed the walls of the house to break in, thus destroying the wall. PW2 also said that the group broke the cardboard dividing the walls of the house to access the room

where the deceased was hiding.

40. I considered that PW2 was sitting outside when the group came, while PW1 was inside the house. While PW2 could clearly see what the group was doing outside, Pw1 could only see what they did when they entered the house. What PW2 said she saw was what was done outside the house while what PW1 saw was what happened inside the house. Given these circumstances, I find that there was no contradiction in the evidence of the two eye witnesses. The differences in their evidence was merely a variation based on their location within the home when the accused persons and their accomplices arrived. Nothing turns on this ground.

41. PW5 was the scenes-of-crime officer. He went to see the scene of murder on 26th December 2013. PW5 said that he found the body of the deceased had already been burnt using a tyre. He saw the deceased had one shoe in one leg. PW5 took photos of the scene and the deceased body which he produced in court as P. exhibit 1 and the report and certificate dated 23rd January 2014 as P. exhibit 2.
42. There was no reasonable explanation or motive shown for this attack except the fact that the accused were heard swearing they must kill him. The other explanation maybe what the accused introduced in their defence that people said of the deceased that he would never steal again. While motive is a relevant factor in establishing the guilt of the accused, the absence of proof of motive does not defeat the case altogether.
43. The court in the case of **Libambula v Republic [2003] KLR 683** reasoned that point thus:

> **"Motive is that which makes a man do a particular act in a particular way. A motive exists for every voluntary act and is often proved by the conduct of a person. See section 8 of the Evidence Act Cap. 80 Laws of Kenya. Motive becomes an important element in the chain on presumptive proof and where the case rests on purely circumstantial evidence. Motive of course, may be drawn from the facts, though proof of it is not essential to prove a crime." (**Emphasis added).

44. As earlier stated, the defence raised a complaint that investigations carried out in this case were poor and culprits were not apprehended. One crucial suspect who was named by PW2 was the 2nd accused brother Kamau who was seen carrying a panga by PW2, and participated in this crime. Also mentioned by PW1 was one Karanja, another neighbor who was also part of the perpetrators of the offence. Both these people were not arrested or charged with this offence. I do agree that efforts made to investigate the case were poor, there is evidence of laxity given the time it took for the offence to take any steps or actions over the case.
45. The failure to charge any of possible accomplices does not lessen the accused person's culpability. Where there is evidence to show an accused person's involvement in actions by others acting in concert with him/her leading to the death of a deceased, in such circumstances, an accused would be held individually responsible for the acts that were committed by any of the accomplices in furtherance of the joint action. As **section 21** of the **Penal Code** provides:

> **"When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence."**

46. The accused put forward an alibi as their defence. In the case of **KARANJA VS. REP 1983 KLR 501** it was held as follows:

> **"The word "alibi" is a Latin verb meaning "elsewhere" or "at another place". Therefore where an accused person alleged he was at a place other than where the offence was committed at the time when the offence was committed and hence cannot be guilty, then it can be said that the accused has set up an alibi. The appellant's story in this case did not amount to an alibi as it was mentioned in passing when giving evidence and, furthermore, it was not raised at the earliest convenience, ie**

when he was initially charged.

In a proper case, the court may, in testing a defence of alibi and in weighing it with all the other evidence to see it the accused's guilt is established beyond all reasonable doubt, take into account the fact that he had not put forward his defence, or his alibi, if it amounts thereto, at an early stage in the case, and so that it can be tested by those responsible for investigation and prevent any suggestion that the defence was an afterthought.

47. The Court of Appeal in the case of **LEONARD ASENATH VS REP (1957) EA 206** adopted with approval an English decision, **REP VS JOHNSON 46 CR. APP. R. 55[1961] 3ALL E.R. 969** which held as follows:

> **"Though an alibi is commonly called a defence, it is to be distinguished from a statutory defence such as insanity or diminished responsibility and is analogous to a defence such as self-defence or provocation. A prisoner who puts forward an alibi as an answer to a charge does not assume any burden of proving that answer, and it is a misdirection to refer to any burden as resting on the prisoner in such a case."**

48. The Court of Appeal in **UGANDA V. SEBYALA & OTHERS [1969] EA 204** where that Court adopted a decision made in the same year by Georges, CJ in **TANZANIA CRIMINAL APPEAL 12 D68** thus:

> **"The accused does not have to establish that his alibi is reasonably true. All he has to do is to create doubt as to the strength of the case for the prosecution. When the prosecution case is then an alibi which is not particularly strong may very well raise doubts."**

49. Although the accused persons put forward an alibi in their defence, they have not succeeded in creating doubt as to the strength of the prosecution case. The evidence of PW1 and PW2 places them at the scene of crime which took place in broad daylight and in the glare of the public. The incident took a long time as the culprits took time to match the deceased from his home to the local time where they carried out there heinous act.
50. The accused persons' defences denying any role in the deceased death were obvious lies. They were positively identified by PW1 and 2 who had known them since their childhood. They took away the deceased. PW1 and 2 followed the two accused and their group up to the place where they burnt him. There is no doubt in my mind that the two were positively identified by PW1 and 2 as being not only present but the ringleaders of the group that carried out this heinous act. Their defence is therefore a bare denial and I hereby reject it in totality.
51. For this conclusion, I am guided by the Court of Appeal decision in which it had occasion to consider the effect of a finding that the accused in his defence told an obvious lie. In **ERNEST ABANGA ALIAS ONYANGO VS REPUBLIC CA NO. 32 OF 1990,** the Court observed:

> "In **RAFAERI MUNYA alias RAFAERI KIBUKA V REGINAM (1953) 20 EACA 226**, **the appellant there was convicted of murder and the case against him was mainly based on circumstantial evidence. In his sworn evidence at the trial, he made some denials which were obviously false. It was held that**:
>
> The force of suspicious circumstances is augmented where the person accused attempts no explanation of facts which he may reasonably be expected to be able and interested to explain; false, incredible or contradictory statements given by way of explanation, if disapproved or disbelieved become of substantive inculpatory effect.
>
> **This case in our view, does not in any way go against the basic legal principle that the burden of proving a criminal charge beyond doubt is solely and squarely upon the prosecution. But its basic holding, namely that when an accused person tells an**

obvious and deliberate lie which is disproved or disbelieved, then such a lie is capable of providing corroboration to other independent evidence available".

52. The prosecution adduced evidence which established beyond any doubt that the accused persons with others forcefully carried away the deceased from his home, matched him to the local market centre and set him ablaze. It was in the accused persons' interest to explain how deceased met his death or alternatively how they parted company. They denied involvement instead of offering an explanation. Even then, I find that the prosecution has shown, without any breach in the chain of evidence that the accused persons and others with them took the deceased with them and by the time they left him, they had lynched him to death.
53. Having considered the entire evidence adduced by the prosecution in this case, I find that the prosecution has adduced overwhelming evidence against the accused. The evidence has established that the accused took away the deceased forcefully from his home, matched him to the nearest market centre, doused him with petrol and set him ablaze in cold blood. The choice of manner in which the execution was carried out by lynching goes to prove that the accused had formed an intention to cause either death or grievous harm to the deceased. The prosecution has shown that the accused acted in common intention with each other and others who were not charged with this offence. Common intention was therefore proved.

54. Having carefully considered the prosecution case, I find that there is overwhelming evidence that the accused persons were part of the mob that attacked the deceased person before they burnt his body. The prosecution has proved its case against both the 1st and 2nd accused persons beyond any reasonable doubt. I find that that the charge against the accused persons of murder contrary to **section 203** of the **Penal Code** has been proved to the required standard.

55. Having come to the conclusion I have of this case, I find both accused persons guilty of murder contrary to **section 203** of the **Penal Code** and convict them accordingly under **section 322** of the **Criminal Procedure Code.**

READ, DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25th FEBRUARY 2016

LESIIT, J.

JUDGE.