



**OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CRIMINAL CASE (MURDER) NO. 21 OF 2010**  
**REPUBLIC.....PROSECUTION**

**VERSUS**

- 1. MOHAMMED DADI KOKANE alias GABO**
- 2. ALFRED NJURUKA MAKOKO**
- 3. SAMWEL MWACHALA MWAGHANIA**
- 4. JAMES CHACHA MWITA**
- 5. DANIEL MDACHI MNENE SULEIMAN**
- 6. OSMAN ABDI HUSSEIN**
- 7. CRISPUS MKUNGUZI MNGOLIA**
- 8. REGEA OMAR SALIM.....ACCUSED**

**JUDGMENT**

The County of Taita/Taveta is a vast and expansive County. The heat can be punishing with day time temperatures rising to about 35<sup>o</sup> centigrade. Despite the harsh terrain the land contains vast deposits of precious minerals and gemstones. The deceased in this case **CAMPELL RODNEY BRIDGES** was a Geologist who had been engaged in mining activities in the Taita/Taveta County from the year 1974. He had established two companies namely Bridges Exploration Company and First Green Garnet Company. In the year 2006 local residents of this area also developed an interest in mining and some of them set up companies in order to mine and sell the gemstones. It is conceded by all witnesses that there existed a long standing dispute between the deceased and these '*local miners*' over mining rights notably in the Mwasui and Mukuki Ranches. This dispute tragically resulted in the untimely death of the deceased on the afternoon of 11<sup>th</sup> August, 2009.

The accused persons namely:

- **MOHAMED DADI KOKANE alias GABO** (hereinafter referred to as the 1<sup>st</sup> accused)
- **ALFRED NJURUKA MAKOKO** (hereinafter referred to as the 2<sup>nd</sup> accused)
- **SAMWEL MWACHALA MWAGHANIA** (hereinafter referred to as the 3<sup>rd</sup> accused)

- **JAMES CHACHA MWITA** (hereinafter referred to as the 4<sup>th</sup> accused)
- **DANIEL MDACHI MNENE SULEIMAN** (hereinafter referred to as the 5<sup>th</sup> accused)
- **OSMAN ABDI HUSSEIN** (hereinafter referred to as the 6<sup>th</sup> accused)
- **CRISPUS MKUNGUZI MNGOKA** (hereinafter referred to as the 7<sup>th</sup> accused)
- **REGA OMAR SALIM** (hereinafter referred to as the 8<sup>th</sup> accused)

**Are all jointly charged with the offence of MURDER CONTRARY TO SECTION 203 as read with section 204 OF THE PENAL CODE** Cap 21, Laws of Kenya. The particulars of the charge were given as follows:

**“On the 11<sup>th</sup> day of august, 2009 at Kambanga in Mwasui Ranch Mwatate in Mwatate District within Taita/Taveta County together with others before the court murdered BRIDGES RODNEY.”**

All eight (8) accused persons entered a plea of ‘*Not Guilty*’ to the charge. The trial commenced before the High Court in Mombasa on 18<sup>th</sup> November, 2011. **MR. ONDARI** Deputy Director of Public Prosecutions appeared for the prosecution/State. **MR. KITHI** Advocate acted for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> accused persons. **MR. KIRUI** acted for the 7<sup>th</sup> accused. **MR. MWAWASI** acted for the 4<sup>th</sup> accused, **MR. GIKANDI** appeared for the 6<sup>th</sup> accused whilst **MR. MWANYUMBA** represented the 8<sup>th</sup> accused persons. The prosecution called a total of twenty six (26) witnesses in support of their case. I will now proceed to give a brief synopsis of the prosecution case.

**BRUCE BRIDGES (PW 15)** a son to the deceased told the court that on 10<sup>th</sup> August, 2009 he and his father together with one of their employees were driving to Mwatate. A cream pick-up vehicle blocked their path. Inside the pick-up were persons whom **PW15** recognized as Njuruka (accused 2), Salatt (not before the court) and Osman (Accused No. 6). The men who were armed with rungun jumped out of the pick-up and ran towards the deceased saying that they will take over the mines by force and will kill the deceased. The deceased showed the men a letter dated 6<sup>th</sup> August, 2009 written by the Commissioner of Mines and Geology directing that the illegal miners vacate the site occupied by the deceased. The men issued more threats against the deceased then jumped back into their pick-up and drove off.

The following day on 11<sup>th</sup> August, 2009 the deceased **PW15** and some of their workers went to Wundanyi Law Courts to attend the hearing of a case in which some of the workers of the deceased had been charged with the offence of trespass. The case did not proceed as the prosecution witnesses failed to show up. At about 12.00 noon the deceased and his party went to see the District Officer in Wundanyi to complain about the death threats they had received the previous day. The deceased requested the District Commissioner to provide them with security as they drove back to their Kambanga camp in Mwasui Ranch in Mwatate. The deceased sought security to allow him safe passage to his camp because one of his workers **AMOS KYAMBA PW1** had reported receiving information that some gangs had blocked the route to the deceased’s camp at Kambanga. After reporting to the District Commissioner the deceased and his team went to report the threats to the officer commanding Wundanyi police station a **Mr. Ikiara PW19**. The deceased requested to be provided with a police escort to his site. The OCS did not avail any security. Thereafter deceased and his team made the same report to the OCPD. Still no police escort was availed to them. The deceased then set off for his camp in Kambanga accompanied by his son Bruce **PW15** and his employees **AMOS KYAMBA (PW1)**, **PHILLIP SYENGO (PW2)**, **JOHN MUMO (PW3)** and **PETER KASUNGULIA NGELO (PW5)**. The team stopped briefly in Mukuki village to meet one ‘*Cosmas*’ and thereafter proceeded on their way. The evidence from the eye-witness is unanimous that as they drove to their camp they came across a barrier on their route consisting of trees and branches placed across the road and a trench dug to prevent the vehicle from proceeding. The deceased and his party cleared this first barrier by removing the obstacles and proceeded on their way. About 100metres ahead they came across a second barrier where deep trenches had been dug across the road and boulders, trees and branches placed to prevent their vehicle from driving on. This time the deceased and his team by-passed this second barrier drove around the trenches, cut a path through the bush land and proceeded on their journey. They came to yet a third barrier which they also by-passed. Finally the team came to an enormous tree felled across the road near their camp. The deceased and his

team all alighted from their vehicle in order to try and remove the tree so as to gain access to their camp. Suddenly a gang of about 20 – 30 men came rushing at them whooping and hollering and shouting that they will kill them. The men were armed with bows and arrows, spears, stones, rungs, knives and sticks. This gang of men set upon the deceased and his companions and began to attack and assault them. The deceased and his companions tried to defend themselves by fighting back. During the altercation **PW1** sustained a cut to left hand, right ear and face and **PW5** was also injured. **PW2** was hit on the back with a stone and fell down. The deceased sustained a deep stab wound under his left arm. The deceased fell down bleeding profusely. After realizing that they had critically (and may be fatally) wounded the deceased the gang of attackers ran away. It was left to **PW15** and the others to try and administer first aid in an attempt to save the life of the deceased. In this regard **PW15** the son of the deceased states:

**“After the attackers left I ran back to my father. Phillip PW2 was standing next to him yelling ‘Baba’ ‘Baba’. The deceased was very pale and the ground around him stained with blood.....I tried to administer first aid. He had a huge wound on his side. I took my shirt off and tried to plug the wound. We all lifted my father into the vehicle ..... I drove to Voi. I called my mother to inform her of the attack. I asked her to call AAR to meet us in Voi. I called Robert of Taita Sisal Estate where I knew they had a clinic. Robert told me their clinic cannot handle grievous wounds. I drove to Voi as fast as I could.....”**

Despite these frantic efforts made to save his life, the deceased was pronounced dead upon arrival at Voi District Hospital. His body was later airlifted to the Lee Funeral Home in Nairobi where an autopsy examination was conducted. Police commenced their investigations into the incident which investigations culminated in the arrest of the eight accused persons. All eight were arrested at various different times. Infact some of the accused persons were arrested and were arraigned in court **after** the trial had commenced. Their cases were all consolidated and heard together. In each case accused persons through their respective advocates waived their right to recall any of the witnesses who had already testified.

At the close of the prosecution case the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> accused persons were all found to have a case to answer and were all directed to give their defence to the charge. All seven (7) accused persons made statements in defence in which they each denied any and all involvement in the death of the deceased. The 8<sup>th</sup> accused person **REGA OMAR SALIM** however was found to have no case to answer and was acquitted under section 306(1) of the Criminal Procedure Code. I had promised in my ruling to give the reasons for her acquittal and I will now proceed to do so. In the evidence from the eyewitnesses, none of them mentioned a woman as having been one amongst the gang who waylaid and attacked the deceased person and his team. Indeed no single eyewitness identified the 8<sup>th</sup> accused as one of the attackers who were present at the scene. The only reason the 8<sup>th</sup> accused was linked to this incident is because she was said to be a director of ‘*Tia Akili*’ Mining Company which was one of the companies run by the independent miners who were rivaling the deceased’s companies for mining resources in the area. This link is in my view too tenuous to impute much less prove any guilt on the part of the 8<sup>th</sup> accused. It is for this reason that I found that no *prima facie* case had been proved as against the 8<sup>th</sup> accused and I did therefore acquit her of this charge of murder. With respect to the remaining seven (7) accused persons, this court having heard their defences is now obliged to examine and analyze the evidence on record, with a view to determining whether this charge of murder has been proved to the legally accepted standard - being beyond a reasonable doubt.

The offence of murder is defined as follows by section 203 of the Penal Code:

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

This definition gives rise to four (4) crucial ingredients of the offence of murder all four of which the prosecution must prove beyond a reasonable doubt in order to prove the charge. These are:

1. The fact of the death of the deceased.

2. The cause of such death.
3. Proof that the deceased met his death as a result of an

unlawful act or omission on the part of the accused persons, and lastly

4. Proof that said unlawful act or omission was committed with malice aforethought.

## 1. FACT OF DEATH

On the fact of the death of the deceased there cannot be any doubt. Nearly all the prosecution witnesses who testify confirmed that they had personal knowledge or were informed of the fact that the deceased met his untimely death on the afternoon of 11<sup>th</sup> August, 2009. The eyewitnesses to this incident (whose evidence I propose to analyze later) all testify that they were together with the deceased at the material time and saw him being fatally stabbed in the left side. **PW18 SUPERINTENDENT ABDUL MUJIKA** who at that time was the DCIO Taita/Taveta told the court that he received news that the deceased had been seriously injured. **PW18** rushed to the Voi District Hospital where the deceased had been taken but upon arrival he was informed that the deceased had already died. **PW17 JUDITH CAMPELL** the widow of the deceased also confirms the death of her husband on 11<sup>th</sup> August, 2009. She told the court that upon being informed of the incident she did alert the AMREF Flying Doctor Services in an attempt to have the deceased airlifted to Nairobi for treatment. Unfortunately the Flying Doctor Services arrived too late to save the life of the deceased but they did airlift his body to Lee Funeral Home in Nairobi. All these witnesses spoke of having seen a stab wound on the left chest of the body. **PW21 SERGEANT DAVID CHEGE** is a scenes of crime officer. He informed the court that he received one exposed film from the investigating officer which film he developed. The photographs which are exhibited in court **Pexb8** depict a tall and well-built male of Caucasian descent. Visible in the photographs is a deep penetrating wound under the left arm. All these witnesses who knew the deceased well identify him as **CAMBELL RODNEY BRIDGES**. On the fact of death therefore, this court entertains no doubt whatsoever.

## 2. CAUSE OF DEATH

As stated earlier the evidence was to the effect that the deceased sustained a deep stab wound to the upper left chest. The effect that this injury had on the life of the deceased is testified to by **PW24 DR. JANE WASIKE SIMIYU** a pathologist working with the National Public Health Laboratories in Nairobi. **PW24** told the court that on 12<sup>th</sup> August, 2009 she conducted an autopsy examination on the body of the deceased at the Lee Funeral Home. Upon examination she noted the following relevant external injuries:

- Penetrating wound on left anterior axilla (left front side of armpit) measuring 5 cm long.
- Wound track from left outer axilla penetrating chest cavity via third intercostal space.
- Fracture of 3<sup>rd</sup> and 4<sup>th</sup> ribs on left side which perforated the left upper lobe of left lung.
- Perforation of left aorta.

**PW24** also noted the following internal injuries:

- Left haemothorax measuring 600 mls.
- Fracture of left 3<sup>rd</sup> and 4<sup>th</sup> ribs.
- Perforation of left upper lung lobe.
- Perforation of descending aorta through and through.

From this examination **PW24** formed the opinion that the cause of death was “*penetrating chest injury which perforated the left lung and aorta due to a sharp object*”. **PW24** did explain to the court that the ‘aorta’ is the major blood vessel which carries blood from the heart to the rest of the body and this explains why the perforation of the aorta would be fatal. **PW24** filled and signed the postmortem report which she produced as an exhibit **Pexb28**. This was expert medical evidence and it was neither challenged nor controverted by any of the accused persons. Some controversy did arise regarding the date indicated

on the postmortem form. Whereas **PW24** testified that she performed the autopsy on 12<sup>th</sup> August, 2009, the postmortem form produced in court was dated 13<sup>th</sup> August, 2009. This controversy was however cleared up by **PW26 PC JOHN BIKO** who told the court that he is stationed at the City Mortuary in Nairobi and confirmed that it was he who filled out and dated the postmortem form. He pleads that he endorsed the date 13<sup>th</sup> August, 2009 in error and confirms that the correct date on which he witnessed the autopsy was 12<sup>th</sup> August, 2009. As a court I am willing to accept that this endorsement of the wrong date was the result of normal human error – nothing more sinister can be inferred.

### 3. **THE ACTUS REUS**

Having sufficiently proved the fact as well as the cause of the death of the deceased the prosecution is under a duty to prove that the accused persons before the court are criminally culpable for the act leading to the death of the deceased. This is what in law is referred to as the ‘*actus reus*’ of the offence. **Websters New World Law Dictionary** defines ‘*actus reus*’ as “*The voluntary and wrongful act or omission that constitutes the physical components of a crime*”. Thus the prosecution must adduce evidence to prove that the seven (7) accused persons were guilty of a wrongful act or omission, the direct consequence of which was the death of the deceased. The fact that such an incident/attack did in fact occur on 11<sup>th</sup> August, 2009 cannot be in any doubt. Aside from the eyewitness testimony of those who were present at the time, there is evidence from others who received reports of said incident and acted on such reports. **PW18** Superintendent Abdul Mujika told the court that he rushed to Voi District Hospital immediately he received the report. He confirms he found the deceased lying bleeding unconscious. He also confirms that he saw injuries on Amos **PW1** and Phillip **PW2**. The fact that **PW1** and the deceased’s son **PW15** also sustained injuries during the attack is proved by the photographs taken by **PW15** on that day. **PW1** had a stitched wound on the forehead and **PW15** had a bruise around his neck. **PW23** Sergeant Sulubu who was the investigating officer told the court that he visited the scene on 12<sup>th</sup> August, 2009. He found the scene exactly as described with boulders and trees blocking the road, trenches dug, etc. **PW23** told the court that he collected from the scene certain exhibits including five (5) poisoned arrows, a spear handle and two arrow heads. All these were produced in court as exhibits **Pexb2**. **PW23** also took photographs of the scene which were produced in court **Pexb16** and **Pexb17**.

There were five (5) eyewitnesses to this incident. All of them state to a man that one of the attackers stabbed the deceased in the chest. The witnesses all state that the person who physically stabbed the deceased was a man whom they variously identify as ‘*Salatt*’ or ‘*Jillo*’. **PW1** states in his evidence:

**“I know his name. It was Salatt. He stabbed the deceased on the left armpit. Salatt was holding a long knife over 1 foot long which he used to stab the deceased.”**

**PW2** on his part states:

**“Salatt is the one who stabbed the deceased. I have known Salatt since 2006.....”**

**PW15** the deceased’s son who was also present stated as follows:

**“Salatt ran with his big knife and stabbed my father under the left arm with the knife. It was a fast and lethal strike. Then Salatt yelled “Finish him completely”.....”**

The witnesses also state that after he had been stabbed the deceased called out to his companions saying ‘*Salatt has done something to me*’. Thus it would appear that even the deceased himself saw and identified this ‘*Salatt*’ as the man who had stabbed him. From this testimony of the eyewitnesses it cannot be in any doubt whatsoever that the person who fatally stabbed the deceased was this man called ‘*Salatt*’. None of the accused persons in court is called Salatt. Indeed the court has been informed that this man ‘*Salatt*’ escaped after the incident and has not been traced to date. One would be tempted to ask why the accused persons are in court facing a charge of murder yet the man who delivered the fatal blow has by all accounts absconded. The fact is that in law criminal culpability does not visit only the person who committed the act in question, equal criminal culpability lies with any person or persons who aided,

abetted or were in any other way complicit in the illegal act or omission.

In this regard section 20(1) of the Penal Code Cap 21 Laws of Kenya provides as follows:

**“20(1) When an offence is committed each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it that is to say**

- a. **Every person who actually does the act or makes the omission which constitutes the offence**
- b. **Every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence**
- c. **Every person who aids or abets another person in committing the offence**
- d. **Any person who counsels or procures any other person to commit the offence.....”**

Before I proceed to address my mind to the question of whether the accused persons were involved in executing a common intention with this man ‘Salatt’. I deem it to be necessary to settle the question of whether there has been a clear positive and reliable identification of each of the accused persons, as having been present at the scene on that fateful day and as having participated in the attack on the deceased and his team.

The incident, the court is told occurred between 3.00 p.m. to 4.00 p.m. at Mwasui Ranch in Mwatate. Given the time it was broad daylight and visibility was good. The attack took a good amount of time. From the account given by the eyewitnesses, I would surmise that the whole attack lasted at the very minimum thirty minutes or so. As such the witnesses had ample time and opportunity to see their attackers. None of the attackers was masked and none had covered their faces. **PW1** told the court that he was well able to identify the attackers. He states:

**“I saw the people who attacked us. I knew them well. Some are here in court. One is Njuruka (A-2), Sammy (A-3), Daniel Mnene (A-5), Chacha (A-4) and Mohamed Dado (A-1) who is known as Gabo. They are all here in court.”**

This witness was able to clearly point out and identify each of the persons whom he named before the court. **PW1** told the court that he was sure of his identification because these are all men he had known from before. **PW1** is also clear that the man lunged at him personally and cut him on the neck was one ‘Nicholas Mnene’ who had not yet been arrested. The fact that **PW1** was himself injured during this attack is not in any doubt. **PW18 SUPERINTENDENT ABDUL MUJIKI** the officer who received the victims at Voi District Hospital confirms that though injured Accused 1 was conscious and was able to talk. **PW18** told the court that he questioned **PW1** at the hospital and **PW1** named their assailants as “*Alfred Njuruka, Mohamed Dadi Kokane alias Gabo, Samuel Mwachala Mwangania, James Chacha Mwita, Daniel Mdachi Mnene, Salatt Jillo, Ramadhan Mwaluma, Diriye, Donald Madegu, Ferdinand Shuma and Mkunguzi*”. Thus barely an hour after the attack **PW1** was able to name the attackers whom he saw and recognized. These are the very same persons who have been named by **PW1** before the court. **PW1** has not changed or altered his evidence with respect to those whom he identified in any manner whatsoever.

**PW2** Phillip Syengo also identifies by name those who attacked them. **PW2** identified each of the accused persons in court. He specifically named Mohamed Dadi Kokane alias Gabo (1<sup>st</sup> accused) and goes on to specify that it was the 1<sup>st</sup> accused who was holding a panga and a rungu and who cut him (**PW2**) on the head above the ‘eye’. **PW2** also specifically names Daniel Mdachi Mnene (5<sup>th</sup> accused) whom he identifies as ‘Suleiman’ and his son Nicholas Mnene (who is not before the court) as amongst the attackers. With regard to the 5<sup>th</sup> accused **PW2** says:

**“Accused 5 and his son were amongst the group of people who attacked us. ....I had known Nicholas for over 3 years. I have known accused 5 for about five years.....”**

**PW2** also names Njuruka (2<sup>nd</sup> accused) and states that he heard the 2<sup>nd</sup> accused say “*Maliza hawa yote*” i.e. Finish them all during the attack. Of the 2<sup>nd</sup> accused **PW2** says:

**“I had known Alfred (Accused 2) for over 4 years. I used to interact with all these people regularly.”**

**PW3 JOHN MUMO** and **PW5 PETER KASUNGULIA NGILU** both employees of the deceased were also present and witnessed the attack. **PW3** in his evidence identifies the attackers as follows:

**“The people who attacked us are in court.”**

The witness then proceeds to positively identify the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> accused persons in the dock. **PW3** goes on to say:

**“Accused 3 is Sammy, Accused 4 is Chacha, Accused 7 is Mkunguzi. I do not know the names of the others but I saw them attack us on that day.....”**

**PW5** was also present and witnessed the attack. He denies a suggestion put to him by defence counsel that when the attackers struck he ran into the nearby bushes in order to save his life. In his evidence **PW5** says:

**“I knew some of the men who attacked us. I knew some by name and others by appearance. I knew Nick who is not before this court. Then there was Chacha who is Accused 4. Accused 4 was armed with a panga. I also saw Mohamed. It is accused 1. Accused 1 cut me on the right hand with a panga. I also saw Sammy accused 3. I cannot recall what he had. I also saw Njuruka who is Accused 2. Accused 2 had an arrow. I saw Crispus Mukunguzi Accused 7. I did not see Accused 5, Accused 6 and Accused 8 on that day. Accused 7 was armed with a panga.”**

Here again the witness has given a clear and concise description of what role each of the persons whom he identified played in the attack. He not only named the assailants but was also able to physically identify each one in the dock. Finally on this issue of identification there is the evidence of **PW15** Bruce Bridges the son to the deceased. **PW15** gave a very clear narration of the events of that day. He too sustained injuries during the attack. In his testimony **PW15** states:

**“I was able to recognize the son of Salatt Jillo, Nicholas Mnene the son of Daniel Mnene Accused 5, Alfred Njuruka Accused 2, Gabo Accused 1, Sammy Accused 3, Diriye Rama Mohamed, Mwandeghu, Mohamed Segi Segi and Owino. Some of those whom I saw are not before this court. I also saw James Chacha Ali among the group. Among the ones I saw were Accused 1 who is Gabo, Njuruka Accused 2, Sammy Chacha Accused 3, Chacha Accused 4. I saw them clearly.....”**

**PW15** goes on to give a vivid description of what type of weapon each man had.

**“Accused 1, Accused 2, Accused 3 and Ali had pangas, Nicholas Mnene had a panga and spear, Diriye had a rungu, Rama had a spear, Salatt Jillo had a rungu and a large knife.....”**

The fact that **PW15** was able to state with such clarity what weapon each man has reinforces the fact that he was able to see them well. As stated earlier this incident occurred in broad daylight and visibility was good. It must also be borne in mind that all the attackers were persons who were well known to the witnesses. They all lived together in the same vicinity. They interacted regularly and they all had interest in the mining industry. They were not strangers to each other. Indeed the witnesses were able to identify each attacker by name. This therefore is not a case of mere visual identification. Rather this is a case of identification by way of recognition. In the case of **ANJONONI & 4 OTHERS VS. REPUBLIC** the Court of Appeal held as follows:

**“.....recognition of an assailant is more satisfactory, more assuring and more reliable than identification of a stranger because it depends upon the personal knowledge of the assailant in some form or other.”**

This is exactly the position that pertains in this case. The parties knew each other well and as such the witnesses were in a position to recognize, identify and name their assailants.

Each of the accused persons made statements in defence. They all totally denied having participated in any way whatsoever in the attack against the deceased and his team. The burden of proof in criminal cases at all time lies upon the prosecution to prove the participation of an accused in any offence beyond a reasonable doubt. At no time does this burden ever shift to the accused. At no time is the accused ever required in law to prove his/her innocence. I will now proceed to consider the defences raised by each of the accused persons against this required burden of proof and determine whether the prosecution has adduced sufficient proof of each accused persons participation in the attack of 11<sup>th</sup> August, 2009.

The 1<sup>st</sup> accused **Mohamed Dadi Kikane alias Gabo** in his defence claimed that he was not even in Voi at the material time. However there has been a clear identification of the 1<sup>st</sup> accused as having been at the scene by **PW1** and **PW2**. **PW3** identified the 1<sup>st</sup> accused as the man who had a panga which he used to cut **PW5**. The 1<sup>st</sup> accused told the court that he did not know the witnesses before and had no grudge against them. There is no logical reason why these witnesses would identify the 1<sup>st</sup> accused as having been at the scene if he was not there. They would have had nothing to gain by doing so. The 1<sup>st</sup> accused's defence amounts to a mere denial and is dismissed as such.

The 2<sup>nd</sup> accused **Alfred Njuruka Makoko** also denies having been at the scene of the attack on the material day. He claims that on 10<sup>th</sup> August, 2009 he travelled to his home to supervise the planting of onions. He claims to have been engaged in this task with a group of workers from 10<sup>th</sup> August, 2009 to 12<sup>th</sup> August, 2009 when he returned to his home in Taveta. The 2<sup>nd</sup> accused admits that he has an interest in mining being the chairperson of Taita/Taveta Small Scale Miners Co-operative however he is unable to produce any document to prove this fact. He totally denies having ever threatened the deceased and denies that he ever had any disagreement with the deceased. **PW1** and **PW2** identified the 2<sup>nd</sup> accused as having been one of the attackers on the material day. He was said to have been armed with a panga with which he cut **PW1** on the neck. The defence raised by the 2<sup>nd</sup> accused is not very persuasive. He claims to have been supervising the planting of onions on his farm and states that he had engaged workers whom he paid a daily wage for work done. However under cross-examination the 2<sup>nd</sup> accused admits that he kept no record of the workers he had hired or how much was paid to each. Any serious farmer who hired workers would in my view have had even some rudimentary record of whom he had hired and the amount paid out to each worker. From his evidence the 2<sup>nd</sup> accused was not alone on his farm – he has not called any single person as a witness to substantiate his defence that he was on his farm planting onions on 11<sup>th</sup> August, 2009. He claims that the prosecution witnesses lied against him but in the same breath states that there was no grudge between them. What would motivate the witnesses to identify him if he were not there? I therefore dismiss this defence as a pure fabrication?

Accused No. 3 **Samuel Mwachala** and Accused No. 7 **Chrispus Mukunguzi Mngola** state that on 11<sup>th</sup> August, 2009 from 3.00 p.m. they were in a meeting in Mwatate with a proposed financier for a mining venture to be undertaken by the 3<sup>rd</sup> accused. They called this person whose name is given as 'Mathenge' as a witness. The two accused claim that after their meeting which ended at 7.00 p.m. at which an agreement was drafted and signed, 3<sup>rd</sup> accused and Mathenge proceeded to Flyover Bar in Voi town where they took drinks until 8.00 p.m. The 7<sup>th</sup> accused who does not drink went home. Again I find this defence raised by the 3<sup>rd</sup> and 7<sup>th</sup> accused to be far from persuasive. The 3<sup>rd</sup> accused claims that he was to meet a man who was to finance his mining venture yet he only knows this all important person by only one name 'Mathenge'. He states under cross-examination that:

**“I only knew him as Mathenge. I do not know his other names.....”**

If a man was to inject finances into his business I doubt that the 3<sup>rd</sup> accused would have known that man by only one name. Further the 3<sup>rd</sup> accused states that this ‘Mathenge’ was to inject a sum of Kshs. 7,000/= into his business. Yet under cross-examination the said financier **DW8** told court that he often paid 3<sup>rd</sup> accused amounts of 15 – 20,000/= as commission for gems sold to him. Why would 3<sup>rd</sup> accused seek the sum of only 7,000/= from this so-called financier when he was already earning much more than that as commission from his sale of minerals. The 3<sup>rd</sup> accused produced as an exhibit the agreement he signed on that day **Pexb4**. I note that what he signed was not a finance agreement with **DW8**. It was merely a consent purportedly issued by 7<sup>th</sup> accused to allow the 3<sup>rd</sup> accused to set up a mining camp in land owned by the Mukunguzi family. He told the court that the agreement was typed at Mwatate and signed in Voi. This financier testified as **DW8**. He told the court that his names are **Titus Mathenge Kangangi**. He confirms that he knew the 3<sup>rd</sup> accused well as the latter used to sell him gem stones. Although **DW8** claimed to be a dealer in gem stones he was unable to show the court any licence to prove that he was lawfully engaging in this business. Further **DW8** contradicts the 3<sup>rd</sup> accused when he says that the agreement was typed in a nearby bar. The 3<sup>rd</sup> accused was positively identified by all the eyewitnesses as having been amongst the group of attackers. **PW3** said he saw the 3<sup>rd</sup> accused hit **PW15**. This defence raised by the 3<sup>rd</sup> accused does not in my view dislodge the evidence against him. I dismiss the defence raised by the 3<sup>rd</sup> accused and find that he was positively identified as one of the attackers.

The 7<sup>th</sup> accused was also said to have been present at this alleged meeting. His role was to give ‘consent’ on behalf of the ranch owners – the **Mkunguzi** family for mining to be conducted on their land. With regard to the agreement the 7<sup>th</sup> accused says he has no idea where it was drafted. The 7<sup>th</sup> accused seemed to be totally at sea regarding the contents of the letters, where it was drafted and by whom.

He says

**“Neema’ is a Kiswahili word. It is required to make the action legal....”**

I have no doubt that the 7<sup>th</sup> accused **did not** draft this document as he claims. This document was merely manufactured by the 3<sup>rd</sup> and 7<sup>th</sup> accused persons in an attempt to bolster their claim of having been away at a meeting in Mwatate on 11<sup>th</sup> August, 2009. The 7<sup>th</sup> accused appeared to have been aggrieved by the fact that the court acquitted the 8<sup>th</sup> accused yet placed him on his defence. With respect to the 7<sup>th</sup> accused though some of the witnesses place him at the scene of the incident **PW15** a key witness does not mention the 7<sup>th</sup> accused as being amongst the group who attacked them. Under cross-examination by defence counsel **PW15** says:

**“I cannot tell if A-7 was involved in the attack on us.”**

**PW15** goes on to say,

**“I have not made any mention of Crispus A7 in my written statement. When we received a call warning us about the road blocks the name of A7 was mentioned as one of the persons putting up the road blocks.”**

Thus it is not clear if the 7<sup>th</sup> accused was arrested on account of his actual participation in the attack or merely due to an allegation (which remains unproven) that he was one of the people who put the road blocks up. **PW15** who had a clear view of events is unable to place 7<sup>th</sup> accused at the scene. It is not for 7<sup>th</sup> accused to prove that he was not at the scene. The onus is on the prosecution to prove his participation in the attack. Despite the weakness of his defence given the contradicting statements in this regard by the eyewitnesses I find that there remains a doubt as to whether or not the 7<sup>th</sup> accused actually

participated in the attack. The benefit of such doubt must go to the 7<sup>th</sup> accused.

The 4<sup>th</sup> accused **James Chacha Mwita** was placed at the scene by **PW1** and **PW2**. He was seen chasing **PW3** and **PW5** said he saw him with a panga. The 4<sup>th</sup> accused told the court that on 10<sup>th</sup> August, 2009 he left Mukuki ranch and went to Voi. He states that on 11<sup>th</sup> August, 2009 he was in Voi. His defence is nothing more than a denial and I do dismiss the same.

The 5<sup>th</sup> accused **Daniel Mdachi Mnene alias Suleiman** has also denied having been at the scene on the material day. He claims that on 11<sup>th</sup> August, 2009 he was in Nairobi having travelled there four (4) days earlier in order to meet the local MP Hon. Dr. Naomi Shaban over problems related to mining in the region. The 5<sup>th</sup> accused told the court that he received the news of the death of the deceased via a telephone call from the OCS Wundanyi at 7.00 p.m. while he was still in Nairobi. The OCS Wundanyi **INSPECTOR GEORGE IKIARA** testified as **PW19**. This witness did not say that he called the 5<sup>th</sup> accused to inform him of the incident. Rather **PW19** told the court that the 5<sup>th</sup> accused called to tell him [**PW19**] that he would not allow the deceased to use the road in question. **PW19** warned accused 5 against taking the law into his own hands. A while later the 5<sup>th</sup> accused called to inform **PW19** that the deceased had been seriously injured. It is not made clear how the 5<sup>th</sup> accused came about this information but of importance is the admission by **PW19** that:

**“I do not know if accused 5 was in Nairobi when he called me.”**

The defence of the 5<sup>th</sup> accused that he was in Nairobi on 11<sup>th</sup> August, 2009 is corroborated by his witness Dr. Naomi Shaban **DW9** the MP for Taveta. She stated that the 5<sup>th</sup> accused is her uncle and confirms that she met with him personally in Nairobi on 11<sup>th</sup> August, 2009 at 9.30 a.m. and again at 7.20 p.m. the same day. If accused 5 was in Nairobi almost 800 km away on 11<sup>th</sup> August, 2009 then he could not have possibly been in Mwatate attacking the deceased. **DW9** did produce her visitors' book as proof that the 7<sup>th</sup> accused made an appointment to come to her office on that day. While the entry in the visitor's book does not amount to proof that the 5<sup>th</sup> accused was away in Nairobi on 11<sup>th</sup> August, 2009, **DW9** struck me as an honest and forthright witness. I doubt that she would have told the court under oath that she met the 5<sup>th</sup> accused in Nairobi on 11<sup>th</sup> August, 2009 if this was not the case. The 5<sup>th</sup> accused produced as an exhibit a bus ticket he used to travel back to Voi from Nairobi on 11<sup>th</sup> August, 2009. The bus ticket bore the name 'Solomon'. The 5<sup>th</sup> accused is not named 'Solomon' but he told the court that he took the name 'Suleiman' upon converting to Islam. Indeed all the witnesses confirm that the 5<sup>th</sup> accused was commonly known as 'Suleiman'. The names 'Solomon' and 'Suleiman' would sound alike to an undiscerning listener. It is common for bus operators to write only one name on a bus ticket and it is not out of the realm of possibility that the person issuing the ticket may have written 'Solomon' instead of 'Suleiman'.

**PW1** and **PW2** state that the 5<sup>th</sup> accused was one amongst the group who attacked them. Much mention is made by all the eyewitnesses of a 'Nicholas Mnene' the son of the 5<sup>th</sup> accused. This Nicholas Mnene is not one of the accused persons in court. Could it be possible the 'Mnene' the witnesses were referring to was actually Nicholas the son and not the 5<sup>th</sup> accused. **PW15** in his evidence constantly refers to 'Nicholas Mnene' the son of Daniel Mnene. **PW15** states as follows:

**“I was able to recognize the son of Salatt Jillo, Nicholas Mnene the son of Daniel Mnene (A5), Alfred Njuruka (A2), Gabo (A1), Sammy (A3), Diriye.....”**

Although some witnesses claim to have seen the 5<sup>th</sup> accused at the scene **PW5** Peter Ngelu who was also present states:

**“I did not see A5, A6 and A8 on that day.....”**

**PW18 SUPERINTENDENT ABDUL MUJIK** told the court that immediately after the attack he rushed to Voi Hospital. He met Amos **DW1** who gave him the names of the attackers which names included Daniel Mdachi Mnene (the 5<sup>th</sup> accused). However **PW19 INSPECTOR IKIARA** told the court that when Amos DW1 called him to report the attack **PW1** stated that “*Njuruka Accused 2, Nicholas Mnene the son of Accused 5 and others had attacked and injured the deceased.*” **PW19** goes on to state under cross-examination that:

**“My information was that Accused 5 was co-ordinating the attack. I do not know if Accused 5 was in Nairobi when he was calling me. I relied on information from my informers. I have not mentioned informers in my statement.....”**

**PW19** appears to have been relying on information from informers as a basis for implicating the 5<sup>th</sup> accused in the attack. There is therefore no consensus on whether the 5<sup>th</sup> accused was at the scene of the attack or not. Some witnesses say he was present others say he was not. Even the investigating officer Sergeant Sulubu **PW23** does not appear certain as to whether **PW5** actually participated in the attack or not. Under cross-examination by Mr. Kithi Advocate **PW23** says:

**“The victims knew the subjects well. Amos named the son of Mnene Suleiman (A-5). I was told by the witnesses that A5 was not amongst the attackers. A5 was arrested because he had earlier threatened the deceased .....”** [own emphasis]

When being re-examined by **Mr. Ondari** the state prosecutor **PW23** says:

**“The witnesses mention one Mnene. This Mnene who participated in the attack is a son to Daniel Mnene A5. A5 is said to have threatened the deceased telling him that he will not leave the camp alive.....”** [own emphasis]

In my view it is quite possible that witnesses referring to ‘Mnene’ actually meant ‘Nicholas Mnene’ the son of the 5<sup>th</sup> accused. The 5<sup>th</sup> accused has given an *alibi* defence which this court cannot so easily discount. He has called a credible witness in support of his alibi. It is not in any doubt that there was bad blood between the 5<sup>th</sup> accused and the deceased. **PW19** has testified to having arrested 5<sup>th</sup> accused over threats made to the deceased. These facts may lead to ‘*suspicion*’ that the 5<sup>th</sup> accused may have been involved in the attack. However, ‘*suspicion*’ cannot form the basis in law for a conviction. As a court I harbor doubts as to whether the 5<sup>th</sup> accused was in actual fact a participant in this attack on the deceased. The benefit of such doubt must be accorded to the 5<sup>th</sup> accused.

The 6<sup>th</sup> accused **Osman Abdi Hussein** is not mentioned by any witness as having been at the scene of the attack. The only reason why the 6<sup>th</sup> accused appears to have been arrested is because he was seen making calls on his mobile phone at Mukuki trading centre shortly before the attack. The 6<sup>th</sup> accused is a businessman who runs a shop at the trading centre. It is perfectly normal and in order for him to have been making calls on his mobile phone. There is no evidence as to whom he called or what was discussed. In his evidence **PW15** stated that the deceased and his team saw 6<sup>th</sup> accused at Mukuki on the way to their camp. They drove on and left the 6<sup>th</sup> accused behind in Mukuki. How then could the 6<sup>th</sup> accused be said to have participated in an attack several kilometers away. All **PW15** can say against the 6<sup>th</sup> accused is that he made a phone call. **PW15** said that he ‘*believed*’ that the 6<sup>th</sup> accused was making the call to co-ordinate the attack and to alert the attackers. The mere existence of a belief does not amount to evidence. There exists no concrete evidence to link the 6<sup>th</sup> accused to this attack at all. Questions were raised as to why the police failed to conduct any identification parade at which the eyewitnesses would have been able to confirm their identification of the assailants. Given that these people all knew each other before this incident an identification parade would have served no purpose and would have in the circumstances been superfluous. Based therefore on the foregoing I hereby dismiss the defences raised by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused persons. I am satisfied that they all participated and were actively involved in the attack against the deceased and his team on 11<sup>th</sup> August, 2009.

With regard to the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> accused the evidence does not link them to the attack beyond a reasonable doubt. They therefore have no connection to the ‘*actus reus*’ of this offence. I enter a verdict of ‘*Not Guilty*’ and I hereby acquit Accused No. 5, Accused No. 6 and Accused No. 7 of this charge of murder.

#### 4. MENS REA

Having proved beyond a reasonable doubt that Accused 1, Accused 2, Accused 3, and Accused 4 were in the group who attacked the deceased, can they be held criminally culpable for the death of the deceased given that it has been conceded by all the witnesses that the man who fatally stabbed the deceased was one ‘*Salatt*’ and not anyone of the accused persons. The prosecution sought to prove that the accused persons had acted in concert with this ‘*Salatt*’ and that the attack was both planned and premeditated. In order to find the accused persons criminally liable it must be demonstrated that they shared a common intention with the man ‘*Salatt*’ who actually delivered the fatal blow. This common intention would constitute the *mens rea* of this offence. The term ‘*mens rea*’ is defined by the Wex Legal Dictionary as follows:

**“The state of mind indicating culpability which is required by statute as an element of a crime.”**

Did the accused persons at the time they were executing this attack share a common intention with the man who stabbed the deceased. In CRIMINAL LAW – THE FUNDAMENTALS 1<sup>ST</sup> Edition by Mcalhone & Huxley-Binns a joint enterprise is defined as follows:

**“A joint enterprise is where two or more parties embark upon the commission of a criminal offence with a common purpose. Essentially under the doctrine of joint enterprise, participants in such an enterprise are liable not only for their own acts committed in furtherance of the enterprise but also for the acts of other participants even if the consequences of such acts are unforeseen. The common purpose involves agreement consensus between the parties. This does not mean there has to be any formality involved. Consequently, although in many instances there will have been a plan to commit an offence, this is not required. Agreement may arise on the spur of the moment, with nothing being said at all. It can be made with a nod and a wink, or a knowing look or even inferred from the behaviour of the parties involved.....”**

It is quite clear and evident that this attack was not a random or spontaneous attack. The evidence shows that the attack on the deceased and his party was carefully planned, pre-meditated and well executed. All the witnesses are in agreement that since the year 2006 tensions between the deceased and the so-called independent miners had been rising in the Taita/Taveta County. The locals who wanted to get a foothold into the mining industry viewed the deceased as an outsider who had been given a license to exploit the mineral wealth of their land. **PW7 THOMAS MUTWEIWA** a Superintending Inspector of Mines in the Department of Mines and Geology confirmed in his evidence that his department was well aware of the dispute over mining rights and further confirms that meetings were held with a view to settling the matter. It is also not in dispute that some of the accused persons had a connection with Tia Akili Mining Company run by locals in the area which was seeking to break the deceased family’s hold on the mining industry. Although much of the court’s time was spent trying to establish whether the mining licence held by the deceased was legal and valid that was not a matter for this court to determine. The fact is that on 10<sup>th</sup> August, 2009 a day before this incident the deceased had served on the so called illegal miners a notice to vacate the area.

Obviously this heightened the tensions. There is evidence that prior to the incident threats had been made against the deceased. On 10<sup>th</sup> August, 2009 **PW15** told the court that he was with his father when a pick-up whose occupants included Accused 2, Accused 6, Salatt Jillo and Nicholas Mnene blocked their path. There was an altercation in which it was alleged that threats were made to kill the deceased. The deceased was sufficiently concerned about these threats to report them to the OCS Wundanyi and to the District Commissioner. The deceased reported the threats and requested the police for security to reach his camp in Kambanga. Unfortunately no escort was availed to him. This is the environment in which

this attack took place.

There is also clear evidence that on their way to Kambanga the deceased and his party came across not one, not two, but three road blocks. Some person or persons was very determined to prevent the deceased getting to his destination. These blockages on the road were not just random trees and branches which could have fallen across the road. They included trenches dug across the road to prevent a vehicle from driving past. **PW23** Sergeant Sulubu the investigating officer narrated to the court what he found when he visited the scene on 12<sup>th</sup> August, 2009, a day after the attack. He states:

**“At the scene I found the road had been blocked at several points. Trenches had been dug and big boulders and tree trunks were placed on the road. I counted 11 such blockages. The first barrier were boulders on the road. The second was a trench across the road. I knew it was a freshly dug trench because I had used that same road two days previously. The third barrier was boulders placed across the road. The rest of the barriers placed on the road were tree trunks.”**

The photographs showing these obstacles were produced in court as exhibit **Pexb19**. Such obstacles do not just appear on road. They must have been placed there by somebody. The road had clearly been barricaded to prevent the deceased from driving past. The witnesses state that they had to drive around the obstacles and had to use a different route to get to their camp. After the deceased by-passed the third road block indicating his determination to get to his camp, a group of men armed to the teeth descended from the nearby bushes and set upon the deceased and his companions. **PW1, PW2, PW3** and **PW15** testify that just before the attack they heard whistles. These whistles were undoubtedly a planned signal calling out the gang to action. The men who attacked were armed with bows, arrows, rungas, swords and knives and spears. The witnesses also heard shouts of “*kill them all*”. This is the version of the events as narrated by **PW15**:

**“We by-passed the third road-block. We drove several metres. We came to an enormous tree felled across our camp road near our Green Garnet 2 Camp. We stopped and we all alighted from our vehicle to see what we could do. A gang of 8-10 men came running down the road shouting “We have come to kill you all”. They were speaking in Swahili. I grew up in Kenya so I understand Kiswahili. The men were armed with all manner of weapons, bows and arrows, knives, spears and throwing stones.....they were all armed..... The men all rushed towards us blowing whistles. I looked up at Green Garnet 2 and there were men coming from the camp and out of the bushes. It was a well organized group. They surrounded us shouting we have come to kill you. They uttered racial derogatory remarks. The group was violent and aggressive.....We were surrounded and attacked from all sides.....”**

As I stated earlier this was no random attack. The assailants acted in a group. They were all armed to the hilt. They signaled to each other through shouts and whistles. This was a formation. The other eyewitnesses give a similar narration of the attack. The group was armed, co-ordinated and on a mission to ‘kill’ the deceased and his team. It is clear that they were lying in wait for the deceased. They struck just as the deceased and his team got out of their vehicle to remove the last barrier placed on the road to their camp. The intention of the group was clear and evident – they were determined to use any means necessary including use of lethal force to prevent the deceased from accessing his camp. These were actions which were carefully planned and executed. The group had a common mission and a common intention. Section 21 of the Penal Code provides:

**“Where 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 nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.” [my emphasis]**

Here the common intention was to prevent the deceased reaching his camp. The actions of the accused were unlawful in that they had no right to block the deceased from using a public road, or from accessing

his own property. Given the tensions over mining rights the accused persons may have felt aggrieved by the fact that the deceased was mining on what they considered to be 'their' land. There exist proper legal channels by which such grievances could be addressed – through the police, the provincial administration and/or the department of Mines and Geology. Even if the deceased were truly a trespasser on that land the accused had no right to take the law into their hands in the manner which they did. This type of jungle law has no place in a civilized society. The accused acted unlawfully in blocking the road and in attacking the deceased to prevent him reaching his camp. In prosecuting this unlawful purpose an offence was committed – the deceased was murdered. The accused persons are criminally culpable for this loss of life. The *men rea* for murder is described as '*malice aforethought*'. Section 206 of the Penal code defines '*malice aforethought*' as follows:

**“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.....”**

From the above definition specifically section 206(b) and section 206(c) malice aforethought comprises not only intentional acts, but also comprises reckless acts likely to cause death and/or grievous bodily harm with indifference of the consequences of such acts. In the case of **REPUBLIC VS. RAHMAN & OTHERS 2008 (UKHL)45** while describing the *mens rea* required for a party in a crime of common intention Lord Neuberger of Abbotsbury gave the following illustration:

**If B realizes (without agreeing to such conduct being used) that A may kill or intentionally inflict serious injury, but nevertheless continues to participate with A in the venture, that will amount to a sufficient mental element for B to be guilty of murder if A with the requisite intent, kills in the course of the venture.....”**

Likewise in the case of **NJOROGE VS. REPUBLIC [1983] KLR 197** the Kenya Court of Appeal held that:

**“If several persons combine for an unlawful purpose and one of them in the prosecution of it kills a man, it is murder in all who are present whether they actually aided or abetted or not provided that the death was caused by the act of someone of the party in the course of his endeavours to effect the common object of the assembly.”**

The accused and their cohorts were all armed with dangerous and offensive weapons. They set upon the deceased and his team who were unarmed. The attack was unprovoked. Such action in the minds of the accused persons would clearly have no outcome other than grievous harm or death to the victims. Indeed this is exactly what happened. The deceased was fatally stabbed during the attack. I am satisfied that the prosecution have proved that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused persons and their group in addition to having a common unlawful intention, acted on this common intention with malice aforethought. The ingredients of the offence of murder having been proved beyond a reasonable doubt, I hereby convict the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused persons of the offence of murder contrary to section 203 of the Penal Code of Kenya.

**Dated and Delivered in Mombasa this 17<sup>th</sup> day of December, 2014.**

**M. ODERO**

**JUDGE**