

REPUBLIC OF KENYA

High Court at Kakamega

Criminal Case 10 of 2009

REPUBLIC.....PROSECUTOR

V E R S U S

MATHEWS KHAYADI.....1ST ACCUSED

MAURICE ODONGO.....2ND ACCUSED

MICAH SHAMALA.....3RD ACCUSED

TITUS AMALEMBA.....4TH ACCUSED

S E N T E N C E

The four accused persons were found guilty of the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. Mr. Mukavale, counsel for the 1st, 2nd, and 4th accused submitted in mitigation that the 1st accused is 44 years old, married with five children. The 2nd accused is 53 years old, married with ten children and the 4th accused is twenty years old. They have been in custody since 2009. Mr. Nyikuli, counsel for the 3rd accused submitted in mitigation that the accused is 39 years old. He has one wife and two children. He was the sole bread winner for his family.

With regard to the 4th accused, the court record shows that on 15th June 2009, the court directed that the accused be taken for age assessment. A report by Dr. Vuhya Lucy dated 17th June 2009 indicate that by then the accused was over 18 years. The Doctor gave her approximate age as 21 years. The offence occurred on 15th February 2009 and according to the age assessment report, he was already over 18 years by then. The accused was an adult when he committed the offence.

The court notes that the Court of Appeal has held that the death sentence is inhuman and degrading. However, the punishment for murder still remains the death penalty under our laws. Courts have of late imposed prison sentences. Taking into account the mitigation by counsels for the accused and the circumstances of the case, each accused person is hereby sentenced to serve **Twenty (20)** years imprisonment.

Delivered, dated and signed at Kakamega this 31st day of January 2013

SAID J. CHITEMBWE
J U D G E