

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL CASE (MURDER) NO. 42 OF 2009

REPUBLIC.....PROSECUTION

VERSUS

1. DANIEL MUSYOKA MUASYA
2. PAUL MUTUA MUASYA
3. WALTER OTIENO OJWA.....ACCUSED

RULING

The three accused persons herein jointly face a charge of murder. The matter is before this court for the preparation of the judgment. However I have carefully perused the court record and I find the same to be incomplete. One witness being **PW7 GIBSON GUBE TUNJE** did not complete his testimony. This witness took the stand on 9th February, 2011 and gave his evidence in chief. He was however stepped down in order to await the availability of a document for him to identify. The prosecution closed its case without ever recalling **PW7**. The defence therefore had no opportunity to cross-examine him. I am certain that this was an inadvertent oversight. In my view **PW7** was a crucial witness whose evidence is necessary to enable this court reach a just decision. In the interest of justice he ought to be allowed to conclude his testimony and the defence as of right must be given a chance to cross-examine him. To ensure completeness of the record I invoke the court's powers under section 150 of the Criminal Procedure Code and direct that the said witness be re-called in order to complete his testimony before this court can proceed to prepare the judgment.

M. ODERO

JUDGE

In the presence of:

Mr. Egunza h/b Mr. Magolo

Mr. Jami for State

Court Clerk Mutisya

Court:

Hearing 8th November, 2013 for **PW7** to complete his testimony.

M. ODERO

JUDGE

30TH OCTOBER, 2013