



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**  
**CRIMINAL MURDER NO.57 OF 2008**

J N ..... 1<sup>ST</sup> ACCUSED

A R N ..... 2<sup>ND</sup> ACCUSED

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. The two accused persons herein J N and A R N were jointly charged with two counts of murder contrary to **section 203** as read with **section 204** of the **Penal Code**. The particulars are that on the 3<sup>rd</sup> December 2008 at [particulars withheld] in Kuria District within Nyanza Province, they jointly murdered H N (count 1) and G N (count II). The two accused all returned a plea of not guilty and the trial commenced in earnest initially before Musinga J. as he then was.
2. Briefly the facts of this case are that the 1<sup>st</sup> accused is son to the 2<sup>nd</sup> accused. The 2<sup>nd</sup> accused is the first wife of N C . N C married a second wife by the name B N who is the mother of the two deceased persons herein.
3. On 3<sup>rd</sup> December 2008, N C and his second wife were in their shamba weeding tobacco. They requested one of their sons to prepare some porridge for them. The son did so, took the porridge to the shamba and went back home. Before N C and his 2<sup>nd</sup> wife could take the porridge, the 1<sup>st</sup> accused joined them in the shamba and offered to help his father to weed the tobacco. After a while, N C asked the 1<sup>st</sup> accused to take some porridge but he could not tell whether the 1<sup>st</sup> accused took any porridge, for he just left the shamba soon after that.
4. N C and his 2<sup>nd</sup> wife then left the shamba and went home, with B N arriving home first, and with her was the container that had the remaining porridge. On arrival home, B met her 2 children who asked for porridge. She gave them some and immediately, the deceased started complaining of stomach pains they fell down. Their mother sent one of the older children to run to the shamba and call their father, N C . By the time N C got home the 2 deceased persons had already died. N C started looking for the 1<sup>st</sup> accused, who on being apprehended stated that he had been sent by the 2<sup>nd</sup> accused to put poison in the porridge, and that the substance was targeted at N C so that he could love the 2<sup>nd</sup> accused but luckily for N C , he took the porridge before the substance was put on.
5. After the death of the deceased, post mortem examinations were carried out which established that both deceased persons had died from poisoning. Specimens from the abdomens of the deceased were taken to the Government Chemist for analysis and the report that was prepared showed that there was poisoning in the porridge.
6. The prosecution called the following 8 witnesses in support of its case against the two accused persons: B N (PW1), N C (PW2), D S C (PW3), Z S G (PW4), NO.231283, Chief Inspector

Genze Emojong (PW5), Dr. Okunga Emmanuel Wandera (PW6), Stephen Matinde Waithe (PW7) and

No.77101 Cpl Willy Kiema (PW8).

7. PW1 was B N , the 2<sup>nd</sup> wife to N C and the mother to the two deceased children. She is a co-wife to the 2<sup>nd</sup> accused and step mother to the 1<sup>st</sup> accused. She told the court that she had 4 children: E N 8 years, C N 6 years, H N and G N both deceased.
8. That on 3<sup>rd</sup> December 2008 at about 11.00 a.m. she was in the shamba with her husband N C (PW2) weeding tobacco when the 1<sup>st</sup> accused found them and offered to help his father. That there was at that point when 1<sup>st</sup> accused joined them porridge in a 5 litre porridge in a 5 litre container made by her son E N . The container was under a shade away from where they were cultivating.
9. By the time the 1<sup>st</sup> accused joined them in the shamba, the porridge was already there. The 1<sup>st</sup> accused took his father's jembe and started weeding while PW1 and PW2 went to take the porridge and when she went back to continue weeding the shamba with her husband, she realized that the 1<sup>st</sup> accused had left though she did not see him leaving.
10. After they finished cultivating, PW1 took the remaining porridge and went home. C M and G met her and asked for porridge and she served them. She personally fed the youngest one. H and G then started crying while foaming at the mouth and nose. She sent for her husband but by the time he came back, E was crying of stomach ache.
11. PW2 then called some neighbours, who applied first aid by giving the children milk, but the 2 deceased were unable to take it and died soon thereafter. They then took C to hospital as PW2 returned home. On returning home in the evening she did not find the 1<sup>st</sup> accused, who had been beaten by neighbours, and had gone to the same hospital where they were.
12. At about 8.00 p.m. the police came and took the bodies of the deceased and also arrested the 2<sup>nd</sup> accused. She however confirmed that she did not see the 1<sup>st</sup> accused putting anything into the porridge, that there was no grudge between her and the accused persons. PW1 stated that when they were in hospital she heard the 1<sup>st</sup> accused saying that the 2<sup>nd</sup> accused gave him the poison to put in the porridge so as to make PW2 love her (2<sup>nd</sup> accused) more.
13. PW1 also stated that she and the 2<sup>nd</sup> accused lived in different houses and that PW2 was not going to the house of 2<sup>nd</sup> accused. PW2 was staying with her and the 2<sup>nd</sup> accused never used to visit her (PW1).
14. On cross examination, PW1 maintained that there was no grudge between her and the 2<sup>nd</sup> accused before the incident; that the porridge was placed about 50 m away from where they were cultivating, and that she could see the porridge in the container. She also testified that there was no poisonous snake that could have taken the porridge; that they left the 1<sup>st</sup> accused taking the porridge and went back to cultivate. PW1 however stated that she did not see the 2<sup>nd</sup> accused leaving the shamba and it was the 1<sup>st</sup> accused who said that he was sent by his mother to put the poison in the porridge. On re-examination, PW1 clarified that when her husband and herself took the porridge they did not suffer any pain.
15. PW2 was N C the husband to 2<sup>nd</sup> accused (1<sup>st</sup> wife) and PW1 (2<sup>nd</sup> wife). He corroborated PW1's testimony on how they went to the shamba with PW1, later instructed their son to make and bring them porridge, 1<sup>st</sup> accused joined them in the shamba, they ate the porridge, after which they left the 1<sup>st</sup> accused with the porridge and PW1 took the remaining porridge back home as he remained behind.
16. Afterwards, his son C came running and informed him to go home at once as H was dying. He rushed home and found H lying on the ground, his daughter G was also crying. The two children died after a few minutes after he got home while his son C was also carrying. C was taken and treated in hospital. He confirmed that he did not suffer any pain after taking the porridge but that on coming back home from hospital he gave some of the porridge to a cat and it died almost immediately after taking the porridge. By then there were many people who saw the cat dying.
17. PW2 said he suspected that 1<sup>st</sup> accused poisoned the porridge after they left him drinking it so he

- mounted a search for him. They found him in a maize plantation and on being asked what he put in the porridge, he said that the 2<sup>nd</sup> accused had sent him to poison PW2. The 1<sup>st</sup> accused further told him that the 2<sup>nd</sup> accused had told him (1<sup>st</sup> accused) that it was a love potion to cause him to love her (2<sup>nd</sup> accused).
18. PW2 further told the court that when he married Pw1 (as 2<sup>nd</sup> wife), he built another house for 2<sup>nd</sup> accused (1<sup>st</sup> wife) but he continued to support her. In concluding his examination in chief, PW2 told the court that there was no grudge between him and 2<sup>nd</sup> accused.
19. On cross examination PW2 testified that the 1<sup>st</sup> accused was beaten by member of the public as they were upset with what had happened to the children and after he confessed that his mother, the 2<sup>nd</sup> accused had used him to poison the porridge.
20. PW3 was D S C a nephew to PW2. He told the court that on being informed that 2 of his uncle's children had died and one child was being taken to hospital, he left for the hospital. He met the 1<sup>st</sup> accused in hospital too as he had an injury on one of his hands.
21. PW3 testified further that he chattered with 1<sup>st</sup> accused who told him that he was the one who put the poison in the porridge, the poison having been given to him by one K the 1<sup>st</sup> accused's uncle's wife but then he changed his story and told him that it was 2<sup>nd</sup> accused who gave it to him. That the 1<sup>st</sup> accused further told him that the poison was meant to kill PW2 and PW1.
22. PW4 was Zablon Seronga Ghata, the Assistant Chief Ikegere sub location. He told the court that on 3<sup>rd</sup> December 2008 at about 5.00 p.m. he was in his office when PW2 accompanied by his brother Samuel Wamiti went to him, reported to him that PW2's children had died while one was in hospital.
23. After PW2 narrated the story to him of how the 2 children died and that they suspected the 1<sup>st</sup> accused, he communicated the same with the OCS Kehancha. The OCS then came with other police officers and they all proceeded to PW2'S home. On arrival at PW2's home, he was shown the dead cat which had also taken the porridge. The OCS then took the porridge, the 1<sup>st</sup> accused was not present but he had information that he had been seen in Isebania. However on interrogating the 2<sup>nd</sup> accused, she denied knowledge of anything.
24. On cross examination, PW3 revealed that he only participated in the arrest of the 2<sup>nd</sup> accused from her house which was about 100 metres from the house of PW1.
25. PW5 was No.231283 of Chief Inspector George Emojong the OCS of Kehancha police station. He corroborated PW4's testimony that he had received information of the death of 2 children who had died on being poisoned. He proceeded to the scene and confirmed that the 2 children had died and their bodies were at their mother's house. PW5 proceeded to interrogate PW1 and PW2 who told him that they suspected the 1<sup>st</sup> accused had something to do with the death of the 2 children. They drew a sketch plan and arrested the 2<sup>nd</sup> accused who was suspected to have instructed 1<sup>st</sup> accused to poison the children. The bodies were then taken to Kuria District Hospital where a postmortem examination was later conducted by Dr. Okunga, PW6.
26. At the scene, PW5 recovered a container which had some of the porridge which was said to have been poisoned. He telephoned OCS Isebania police station who rushed to Isebania Hospital and arrested the 1<sup>st</sup> accused. The 1<sup>st</sup> accused was later brought to their station and on interrogation, 1<sup>st</sup> accused told them that it was 2<sup>nd</sup> accused who had directed him to poison the children due to family disputes. They then removed some stomach specimens from the stomach of the deceased and submitted the same together with remnants of the porridge and the container to the Government Chemist for analysis. The green container and the sketch plan of the same were produced as **P. Exhibit 1** and **P. Exhibit 2** respectively.
27. On cross examination, PW5 testified that he was the investigating officer in this case, and that he did not produce the 1<sup>st</sup> accused before a magistrate for a confession nor did the 2<sup>nd</sup> accused confess that she had participated in the poisoning of the children. He denied a suggestion that the 1<sup>st</sup> accused was assaulted in the course of trying to extract a confession from him.

28. After taking the evidence of PW5, Musinga J went on transfer and when the matter came before me and after compliance with **section 200** of the **Criminal Procedure Code**, the case proceeded before me from where it had stopped before Musinga J.
29. PW6 was Ekunga Emmanuel Wandera the Assistant Director of Medical Services and Medical Superintendent at Rongo District Hospital who was previously the Medical Superintendent at Kuria District Hospital. He confirmed that on 4<sup>th</sup> December 2008 he did a postmortem examination on H N at Kuria District Hospital at 3.30 p.m. The body was brought by PW5 in the company of PW1 and PW2.
30. On examination of the body he found that there was no external injury though internally the child had swollen hemorrhagic gut with foul smelling gut contents. He concluded that the cause of death was pulmonary arrest due to possible poisoning. He took specifications for analysis with part of the liver, one kidney, stomach, upper intestines and a blood sample. He gave the specimen to police officers, signed the report and produced the same as **P. Exhibit 3**.
31. Dr. Okunga also did a similar post mortem examination on G N, whose body was whose body was brought by PW5, PW1 and PW2. Externally there were no injuries but internally the hemorrhagic gut too had foul smelling contents. Dr. Okunga formed the opinion that the cause of death was cardio pulmonary arrest due to poisoning. He forwarded sample for analysis such as part of liver, one kidney, stomach, upper intestines and blood sample. He handed over the samples to police, signed the report and produced the same as **P. Exhibit 4**.
32. PW7 was Stephen Matinde Joel Waithe, a government analyst attached at Government Laboratories in Nairobi. He told the court that his duties included identification and grouping of poisons. He also told the court that he knew Samuel Gachuri Njoroge, as his colleague with whom he had worked since 1999. He was conversant with his work and his signature.
33. PW7 identified a report prepared by Samuel Gachuri Njoroge stating that on 11<sup>th</sup> December 2008 one PC Charo Kazungu No.53132 from Kehancha police station submitted items as follows for examination:

*A1: stomach and intestines of H N*

*A2: Liver and kidney of same deceased person*

*A3: Blood sample of same deceased person*

*B1: Stomach and intestines of one G N*

*B2: Liver and kidney of same G N*

*B3: Blood sample of G N*

*C: Plastic Container containing porridge*

34. That the exhibits were accompanied by an exhibit memo form with a request that the items be examined to establish if they contained any poison and if possible determine the type of poison contained therein. PW7 stated that on the items being examined by his colleague, Samuel Gachuri Njoroge, they were found to contain an diazino organo phosphorus pesticide in the stomach of the two deceased persons. He also observed that the substances so found were poisonous and could be harmful to humans when ingested and that no other chemically toxic substances were detected in the exhibits.
35. PW7 confirmed that his colleague prepared the report dated 13<sup>th</sup> February 2009, that the report bore his colleague's signature and the seal of the department. He produced the report and the exhibit memo as **exhibit 5 (a)** and **(b)** respectively. On cross examination PW7 stated that organo phosphorous substances may be harmful to humans depending on quantity consumed and that the level of concentration determines whether death results or not.
36. PW8 was No.77101 Corporal Willy Kiema of Ntitaru Kuria District but who in 2008 was based at Kehancha police station. He told the court that on 3<sup>rd</sup> December 2008 at 8.00 a.m. he received a call from PW5 and proceeded with PW5 to PW1 and PW2's homestead. He corroborated PW5's

- testimony. On cross-examination he testified that he discovered that PW2 was in good terms with 2<sup>nd</sup> accused and PW1 with no evidence of a grudge.
37. At the close of the prosecution case, the two accused persons were put on their defence pursuant to the provisions of **section 306 (2)** of the **Criminal Procedure Code**. They each elected to give unsworn testimonies and called no witnesses.
  38. The 1<sup>st</sup> accused J N C stated that on a date he could not remember he was in the shamba weeding tobacco with both PW2 and PW1. He stated that at that by that time he was young and underage and did not know what was going on. According to him, it was not clear who brought porridge to the shamba.
  39. The 2<sup>nd</sup> accused A R N denied ever knowing the reason why she was arrested. She testified that on the day of her arrest, she was engaged in casual labour when PW2 called her and told her to run home but on her way home she met a group of people in civilian clothes who put her in a vehicle that took her to Kehancha police station. She testified further that to date, she does not know why she was arrested.
  40. At the close of the hearing, Mr. C.A. Okenye, counsel for the two accused persons submitted that the prosecution had not proved its case against the accused persons to warrant a finding of guilty on either count. Counsel advanced the following arguments:-
  41. First that the whole of the evidence on record, and in particular the testimonies of PW2 and PW4 was to the effect that they merely suspected that the 1<sup>st</sup> accused is the one who put a poisonous substance in the porridge at the instance of the 2<sup>nd</sup> accused person. Counsel submitted that no matter how strong a suspicion was, it can never form the basis of a finding of guilty on any offence, and that in the circumstances, it is clear that the suspicion held by PW2 and PW4 cannot be used to say that the prosecution has proved its case against the accused persons beyond any reasonable doubt.
  42. Secondly, counsel submitted that the evidence on record from both PW1 and PW2 shows that there was no grudge between PW1 and the 2<sup>nd</sup> accused; that the evidence showed that PW2 loved both his wives equally. In the circumstances, counsel submitted that there would have been no motive for 2<sup>nd</sup> accused to want to poison both PW1 and PW2 as alleged by the 1<sup>st</sup> accused. Counsel further submitted that in any event, the allegation that the 1<sup>st</sup> accused admitted to having put poison in the porridge is not borne out by a cautionary statement by the 1<sup>st</sup> accused confirming the allegations made by PW3 and PW5.
  43. Finally, counsel submitted that in the absence of any concrete evidence tending to connect the two accused persons or either of them to the poisoning of the porridge, the case for the prosecution remains a mere suspicion, which cannot, no matter how strong it is form a basis for a conviction. He urged the court to acquit the two accused persons for lack of evidence.
  44. After carefully analyzing the evidence on record, there is no doubt that the two deceased persons died; that they died after PW1 gave them some of the porridge she brought back from the shamba after she and PW2 had partaken of porridge from the same container without any adverse consequences. It is also not in doubt that post mortem examination carried out on some body parts of the respective deceased persons revealed the presence of diazno organo phosphorous pesticide, a substance that was classified as a poison by PW7 and which substance may be harmful to humans when indigested. It is also not in dispute that at some point while both PW1 and PW2 were in the shamba weeding tobacco, the 1<sup>st</sup> accused went to the shamba and offered to help PW2 to weed as he (PW2) took some of the porridge which was in the shamba in a plastic container.
  45. The question that arises for determination is: who put the poison in the porridge and at what point was the poison put in the porridge?
  46. From the evidence on record, the prosecution's case revolves around circumstantial evidence since none of the prosecution witnesses saw either the 1<sup>st</sup> or 2<sup>nd</sup> accused put the poisonous substance into the porridge. In this regard, the evidence of both PW1 and PW2 is vital. According to Pw1, the porridge was taken to them by her son E N. According to PW1 also, E took the porridge to the shamba before the 1<sup>st</sup> accused went to the shamba, and while the 1<sup>st</sup> accused weeded, PW1 and PW2 went to take the porridge; with PW1 and PW2 taking 3 and 2 cups of porridge respectively. Just before PW1 and PW2 went back to continue with the weeding, the 1<sup>st</sup> accused joined them where they were taking the porridge and PW1 gave him a cup of

- porridge. Both PW1 and PW2 left the 1<sup>st</sup> accused taking the porridge as they (PW1 and PW2) went back to weed. PW1 said she later realized the 1<sup>st</sup> accused had left the shamba.
47. PW1 also stated the following in her further testimony in chief: “After we finished cultivating, I took the remaining porridge and went home. H and N asked me for porridge and I served them.” Later in the same testimony, PW1 stated: “We left the 1<sup>st</sup> accused taking porridge and went back to cultivate. I did not see him leaving. In the container some porridge had remained. I did not see anyone poisoning it. During re-examination, PW1 stated that she could not see the container with the porridge from where she was digging and confirmed that when she and PW2 took the porridge, they did not suffer any pain.
48. PW2, in his evidence in chief, told the court that by the time E took the porridge to the shamba, the 1<sup>st</sup> accused had already arrived and that he and PW1 partook of the porridge and that the accused also took some of the porridge after both PW1 and himself had taken some of the porridge. PW2 confirms that both he and PW1 left the accused behind where the porridge container was as he (1<sup>st</sup> accused) took his own cup of porridge. PW2 also confirms in his testimony that the 1<sup>st</sup> accused left the shamba without informing them. The 1<sup>st</sup> accused’s anonymous departure from the shamba surprised both PW1 and PW2. PW2 went on to say that as far as he was concerned, there was no grudge between his two wives.
49. PW2 also testified that after the 2 deceased persons died, the 1<sup>st</sup> accused disappeared from the home into a maize plantation but he was flushed out and beaten by members of the public.
50. For the offence of murder to be committed the prosecution must establish that the two accused persons herein had malice aforethought as set out under **section 206 of the Penal Code, Cap 63** which provides as follows:-

**“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.”**

51. As stated earlier in this judgment, the prosecution’s case herein rests entirely on circumstantial evidence. What are the relevant circumstances in this case?

- a. *PW1, PW2 and 1<sup>st</sup> accused all partook of the porridge which had been prepared by E and taken to PW1 and PW2 as the two weeded the tobacco;*
- b. *the 1<sup>st</sup> accused joined PW1 and PW2 in the shamba and also took some of the porridge in the presence of both PW1 and PW2;*
- c. *Both PW1 and PW2 left the 1<sup>st</sup> accused taking his porridge at the point where all the 3 had shared in the porridge;*
- d. *the 1<sup>st</sup> accused was left right there where the plastic jar containing the remainder of the porridge was, with the jar only having a cup as its cover;*
- e. *the 1<sup>st</sup> accused left the shamba without informing PW1 and PW2 that he was leaving;*
- f. *immediately the deceased died the 1<sup>st</sup> accused disappeared into a maize plantation from where he*

*was flushed out and beaten by members of the public.*

52. The question is: Do the circumstances described above link the 1<sup>st</sup> or 2<sup>nd</sup> or both accused to the crimes in this case? In the well known case of **R. –vs- Kipkering Arap Koske & another (1949) 16 EACA 135**, it was held, *inter alia*, that:-

**“In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other hypothesis than that of guilty.”**

53. In the more recent case of **Sawe –vs- Republic [2003] KLR 364**, the Court of Appeal held as follows:-

**“1) In order to justify on circumstantial evidence the inference of guilt,**

**the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis that of his guilt;**

**2) Circumstantial evidence can be a basis of a conviction only if there**

**is no other existing circumstances weakening the chain of circumstances relied on;**

**3) The burden of proving facts which justify the drawing of this**

**inference from the facts to the exclusion of any other reasonable**

**hypothesis of innocence is on the prosecution, this burden always**

**remains with the prosecution and never shifts to the accused.”**

54. The above principles were applied in the more recent cases such as **Warui –vs- Republic [2002] KLR 750** and **Ndunya –vs- Republic [2005] KLR 133**.

55. In the instant case, the 1<sup>st</sup> accused was the last person left with the jar of porridge by PW1 and PW2 as the two went back to weed the shamba. The 1<sup>st</sup> accused left the shamba without informing PW1 and PW2 that he was leaving. I am persuaded with the testimony of both PW1 and PW2 that the only person who had the opportunity to put the poison into the porridge left in the jug was the 1<sup>st</sup> accused. Both PW1 and PW2 denied a suggestion by defence counsel that perhaps there was a poisonous snake which spat its poison into the porridge. In any event, PW1 stated that the container was kept under a shade, though some distance from where they were weeding, some 50 metres to be exact as stated by PW1. The possibility of someone else walking on the road getting into the shamba and poisoning the porridge from where the container stood is too remote an eventuality in this case.

56. Poison is not food. The substance that was found in the stomachs of the two deceased persons was said to be diaznol, an organo-phosphorous pesticide a substance that was classified as poisonous. PW7 stated the substance was harmful to humans when indigested. It could kill and indeed it killed.

57. By putting the poison into the porridge, the 1<sup>st</sup> accused knew that that act of his would probably cause the death of or grievous harm to some person, whether that person was PW1, PW2 or the two deceased persons, regardless of whether he cared that such an eventuality would occur or whether it was his wish, that nobody would die or be harmed. This a look at the circumstances surrounding the poisoning of the porridge clearly shows that the 1<sup>st</sup> accused, either alone or with the help of some other person had the intention to cause the death of someone or to do grievous harm to somebody. The prosecution has thus proved that the 1<sup>st</sup> accused had the necessary malice

aforethought as defined under **section 206** of the **Penal Code** and proceeded to actualize it by poisoning the porridge.

58. Further, there is evidence that after the incident, the 1<sup>st</sup> accused disappeared into a maize plantation. That conduct on the part of the 1<sup>st</sup> accused was inconsistent with innocence. I am therefore satisfied that the chain of circumstances linking the 1<sup>st</sup> accused to the murder of the 2 deceased persons is water tight and unbroken. The 1<sup>st</sup> accused's assertion that he was too young to understand what was happening then does not in any way weaken the evidence by the State that the 1<sup>st</sup> accused had the opportunity to poison the porridge. His anonymous departure from the shamba also indicates that what had taken him to the shamba was not to assist PW2 but to put poison in the porridge and he did so after satisfying himself that there was no chance of him taking the porridge again.

59. In the premises I find and hold that the 1<sup>st</sup> accused, being the last person to eat the porridge before it turned poisonous and the fact that he ran away and hid in the maize plantation are strong and irresistible pointers that he is the one who put the poison into the porridge. Accordingly, I find the 1<sup>st</sup> accused guilty of the murder of H N (Count I) and G N (Count II) and convict him accordingly under **section 322** of the **Criminal Procedure Code**.

60. As for the 2<sup>nd</sup> accused, and apart from the alleged confession of

the 1<sup>st</sup> accused, I find no evidence linking her with the murders of the 2 deceased persons even though it is possible that she may have been the prime mover behind the actions of the 1<sup>st</sup> accused. The 2<sup>nd</sup> accused, Annah Robi Ndera is accordingly acquitted on both counts under **section 322 (1)** of the **Criminal Procedure Code**.

61. Unless the 2<sup>nd</sup> accused is otherwise lawfully held, she is to be released from prison custody forthwith.

62. It is so ordered.

**Dated and delivered at Kisii this 17<sup>th</sup> day of December, 2013**

**R.N. SITATI**

**JUDGE**

In the presence of:

Mr. T. Imbali for State

Mr. Mogire for C.A. for 1<sup>st</sup> Accused

Mr. Mogire for C.A. Okenye for 2<sup>nd</sup> Accused

Mr. Bibu z+ - Court Clerk