



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
CRIMINAL CASE NO. 6 OF 2004

REPUBLIC PROSECUTOR

V E R S U S

1. ANDREA ILOBAACCUSED
2. PATRICK MUHANJIACCUSED
3. DICKSON SHITSELI (deceased)

R U L I N G

1. The accused persons herein were first arraigned in this court on **16.2.2004** where they faced the charge of murder contrary to **section 203** and **section 204** of the Penal Code. It was alleged that on **14.1.2004** at Busalwa village in Kakamega District, they murdered **Timona Mudi**. They denied the charge when they took plea on **26.4.2004** and the case was fixed for hearing on **8.11.2004** and **9.11.2004**. On both dates, no witness was availed and thereafter, it was fixed for hearing and/or mention on **25.11.2004**, **18.1.2005**, **31.1.2005**, **2.11.2005**, **8.11.2005**, **3.7.2006**, **4.7.2006**, **5.2.2007**, **6.2.2007** and on **27.6.2007**, G.B.M. Kariuki, J. took the evidence of two witnesses. The learned judge then adjourned the hearing to **28.6.2007** but on that date as well as on **18.9.2007**, **6.2.2008**, **18.2.2008**, **17.6.2008**, **7.10.2008**, **11.3.2009**, and **12.3.2009**, no witness was availed and on the latter date, Ochieng J. granted the Republic the last adjournment and fixed the hearing for **19.11.2009**. Neither on that date nor on **3.11.2009** when Chitembwe J. ordered the matter to start de novo, did the Republic call any witness. The same was the case on **18.5.2010**, **15.6.2010** and **14.7.2010**, when I also granted a last adjournment. On **5.10.2010** only one witness testified i.e. **PW1, P.C. Nelson Kamama** who visited the scene on **24.1.2004** and re-arrested the three accused persons. On **6.10.2010**, no witness was availed and I reluctantly adjourned it to **29.11.2010** when again no witness appeared and I granted another last adjournment. On **1.2.2011**, **PW2, Samwel Anduku** testified and stated that he was the one who identified the deceased's body during the post-mortem.

2. The Republic closed its case with only the above evidence on record and it is obvious that the said evidence is not, prima facie, sufficient to warrant the accused persons being put on their respective defences.

3. It is not enough that PW1 arrested the accused persons and PW2 identified the deceased's body.

4. I note that in the Statement of offence, 8 witnesses were listed and the evidence of PW1 and PW2 needed beefing up for it to reach the threshold required in law. It is strange that after close to 8 years, the Republic has been unable to call more than the two witnesses above and in the end, I find that the accused persons have no case to answer and they are acquitted accordingly.

5. They shall be released unless they are otherwise lawfully held.

6. Orders accordingly.

Delivered, dated and signed at Kakamega this 13th day of April, 2011.

ISAAC LENAOLA

J U D G E