



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
CRIMINAL CASE NO. 7 OF 2003

REPUBLIC

V E R S U S

GODFREY MAHASI NGAIRA.....1ST ACCUSED
STELLA MUHONJA NGAIRA.....3RD ACCUSED

RULING

1. I have read the record in this matter and it is really disconcerting that I have to state as follows;

The accused persons were first arraigned in court on 1.4.2003 and on that day, Khamoni J. took the plea. They denied the charge of murder contrary to S.203 and S.204 of the Penal Code. It had been alleged that they had murdered one Jonathan Elly Ngaira on 14.7.2002.

2. Although the trial was to commence on 4.2.2004, ten (10) months after the plea was taken, the trial only commenced on 17.5.2005 when G.B.M. Kariuki J. took the evidence of Joseph Ngaira Mweresa and Everlyne Mideva. On 23.5.2006, the learned Judge recorded the evidence of Ismael Ayodi and on 20.2.2007, the evidence of C.I.P Bill Onyango was taken and on 29.5.2007, PC Maurice Wekesa testified in the presence of Assessors and when on 7.10.2007, the requirement for Assessors in criminal trials before the High Court was dispensed with, Ochieng J. recorded the evidence of Dr. Joseph Egala Jumba without Assessors.

3. On 3.12.2008, Ochieng J. delivered a Ruling in which he found that the accused persons had a case to answer and placed them on their respective defences.

4. On 3.11.2009, Chitembwe J. took up the matter and ordered that because the case had been heard with the aid of Assessors, neither Ochieng J. nor himself could continue the case without Assessors and he ordered the trial to begin *de novo*.

5. He fixed the hearing for 8.2.2010 and 9.2.2010 but neither on those dates, nor on 8.3.2010, 31.5.2010, 2.6.2010, 16.6.2010, 13.7.2010, 18.10.2010, 19.10.2010, 15.12.2010, nor 2.2.2011 did the state avail any witness and the case was closed without any evidence being tendered.

6. It is a sad that for close to nine years a simple murder trial cannot be concluded because of the slow wheels of justice. Neither the accused person nor the victim of the alleged murder have received the best that the criminal Justice system can offer and it is a serious indictment of that system that everyone involved finds himself in that sad situation.

7. In any event, I find that no evidence is properly before me as all and although I should only look to the record and see whether a *prima facie* case has been made out to warrant the accused persons being put on their respective defences. No evidence exists at all because the evidence recorded by G.B.M Kariuki J. and Ochieng J. is of no use for obvious reasons.
8. In the event and with a heavy heart, I must find that the accused persons have no case to answer and they are hereby acquitted of the charge of murder.
9. They shall be released unless they are otherwise lawfully held.
10. Orders accordingly.

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

**ISAAC LENAOLA
J U D G E**