



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CRIMINAL CASE NO. 63 OF 2005

REPUBLIC.....PROSECUTOR

VERSUS

JOSEPH WAKOYO LIDIEKA.....1ST ACCUSED
JOSEPHAT INGAMBI MUTOLA.....2ND ACCUSED

RULING

Joseph Wakoyo Lidieka and Josphat Ingambi Mutola (*the accused*), were charged with the offence of murder contrary to Section 203 as read with section 204 of the Penal Code, (*Cap. 63, Laws of Kenya*).

The prosecution's case against the accused is that they, accused, on 1st day of July 2005 in Kiambogo Farm in Laikipia District of the Rift Valley Province, jointly murdered PETER WANGOMBE GITHENDU.

The trial of the accused did not commence until 4th October 2006 when the evidence of PW1 and PW2 was taken before assessors. With the absence of witnesses the trial did not commence *de novo* until 9th November 2009 when two witnesses testified.

It was the testimony of PW1 that he was accosted on his way home from his business by assailants he did not know. The next witness was Dr. Frederick Kariuki who produced the post-mortem report on the deceased. The deceased had a deep cut on the scalp, exposing the skull, had severed feet at the ankle level and dislocation of both ankles, fractured bones of the head, causing internal (*subdural haemorrhage in all regions of the head*). *He gave the cause of death as severe head injury*).

With the orders to commence the case *de novo*, the earlier evidence by PW1 & PW2 giving the circumstances under which the deceased was attacked, was not reproduced. Technically that evidence apart from showing that the deceased had escorted a neighbour's mother-in-law's to the son-in-law's house about 1 km away from the deceased's house, it did not, like the subsequent evidence connect the accused with robbery in Karandi area on 1st July 2005.

What is clear from the evidence of PW6, PW7 and PW8 is that there was general thuggery in the area on the night of 1st July 2005, but none of the witnesses identified either of the accused with that thuggery and in particular the assault upon the deceased. For instance PW8 who was on his way home riding his bicycle, was stopped by people flashing torches whom he though were in need of help, only to

be slapped with the flat side of a panga, and robbed of an unspecified sum of money. He testified that he did not know who assaulted or attacked him.

PW9, P.C. Joseph Kisan and his colleague, APC Wainaina who were on patrol in Karandi area were attracted by persistent screams from Kiambogo Area, and moved towards that direction, and they met PW6, who told them that her young daughter had been defiled, and she was robbed, and while she went to report to the Police Station at Karandi, P.C. Kisan and his colleague went to check the area. They found the house of PW6 "**upside down**".

PW9 and his colleague met a Saloon car taking the deceased to Hospital. Although he was "**able to talk, he did not say who injured him.**"

The evidence is so scanty that it does not say how, where and on what basis the accused were arrested and charged. There is no evidence upon which the accused can be placed on his defence under **Section 306(1) of the Criminal Procedure Code** (*Cap. 75, Laws of Kenya*), and I must therefore make a finding of not guilty.

The court was informed by the prosecution that, the 2nd accused, Josephat Ingambi Mutola had died in prison custody, and his death is subject of inquiry under Section 387 of the Criminal Procedure Code. The 1st accused, Joseph Wakoyo Lidioka should therefore be released forthwith unless otherwise lawfully held.

There shall be orders accordingly.

Dated, signed and delivered at Nakuru this 20th day of May 2011

M. J. ANYARA EMUKULE
JUDGE