



causing him to regain his consciousness. PW1 and deceased were tied with ropes and taken to the chief's office. The chief refused to admit the two and ordered that Boniface be taken to hospital. Unfortunately, the deceased did not reach hospital. He succumbed to death on the way.

PW2 corroborates the evidence of PW1 on how they were captured by the Appellant and his accomplices. He also testified that Edward is the one who started it all and even hit the deceased on the head with a wire. That the deceased snatched the wire and hit Edward with it. As PW2 and PW1 tried to run away, the Appellant and another prevented them from escaping. However, PW2 managed to escape at some stage leaving all the others at the scene.

PW5 the mother of the deceased did not witness the incident. She was informed that her son had been assaulted. She went to the chief's office and found the deceased in a critical condition. She found the deceased and PW1 tied with ropes. When she asked what had happened, the Appellant rebuked her saying that she was lucky to find the deceased alive, otherwise he would have been slaughtered.

In defence, the Appellant said he was at home when he heard some women wailing like someone was dead. He went with his wife to Edward's home where he found Edward with injuries. The Appellant administered first aid to Edward. Then he was told by his wife that some young men had been beaten. He heard that deceased was one of those who had been assaulted. He then went out of the house and saw them. The two young men were taken to the chief as the Appellant went to escort Edward to hospital. He denied the offence.

The trial magistrate found the Appellant guilty in that he had taken control over the victims of the assault. He prevented PW1 and PW2 from escaping and also refused to have the victims untied at the chief's office. The court found that the Appellant, Kizito and Leonard were to blame for the deceased's death. Kizito and Leonard were not arrested for reasons not known to this court despite playing major roles in the death of the deceased. The magistrate did not believe the alibi defence of the Appellant and proceeded to convict him of the offence. It is not correct to claim that the alibi defence was not considered. I have carefully considered the evidence on record. PW1 and PW2 were credible witnesses as the trial court found. The two witnesses testified on how the Appellant, Edward, Leonard and Biket met with them in the company of the deceased. The scuffle about money was between the deceased and Edward. The act of the Appellant of preventing PW1 and PW2 from running away and holding them as the deceased was assaulted, further acts and conduct directly connects him with the offence. The Appellant and his accomplices took the deceased and PW1 to the home of Edward where the deceased was assaulted further. PW1 was also caned by the Appellant and his friends. The Appellant took part in tying the two victims and taking them to the chief's office. At the chief's office the Appellant told PW5 that she should keep quiet and note that she was lucky to find the deceased alive.

The assault on the deceased and PW2 was done by the Appellant and his accomplices with an intention of achieving a common purpose. The purpose was discipline the deceased for taking the batteries from Edward without paying. Edward was the 1<sup>st</sup> accused in the lower court. He explained what had happened earlier between him and deceased in his defence. He was acquitted and since the state did not appeal against his acquittal, this court does not wish to comment on the role he played.

It does not matter what role the Appellant played. He acted alongside others and the action of assault on the two victims led to the death of the deceased. It must not be proved that the Appellant inflicted one or two blows which caused the death of deceased. The act of killing the deceased was done in concert by the whole group to achieve a common purpose. The police ought to have arrested Leonard and Kizito who are highly implicated in the joint venture. The police should arrest then and conduct further investigation on the roles they played in the incident which led to this case.

I find that the trial magistrate was correct in convicting the Appellant. The conviction is safe and sentence reasonable. The appeal lacks merit and I dismiss it accordingly. I uphold the conviction and sentence.

**F. N. MUCHEMI**  
**JUDGE**

Judgment dated and delivered on the 20<sup>th</sup> day of July 2011 in the presence of the Appellant and the state counsel Mr. Ogoti .

**F. N. MUCHEMI**  
**JUDGE**