



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI (NAIROBI LAW COURTS)

Criminal Case 27 of 2009

REPUBLIC-----PROSECUTOR

-VS-

ISMAEL KALAMSHO KABIRU-----1ST ACCUSED
MOHAMMED KAMBICHA GAMO-----2ND ACCUSED
MOHAMMED ALANGO DURBU-----3RD ACCUSED
BURFA JARA DOKOTA-----4TH ACCUSED
ABDI GODANA JARA-----5TH ACCUSED

JUDGMENT

The five accused persons Ismael Kalamsho Kabiru (hereinafter referred to as the 1st accused) Mohammed Kambicha Gamo(2nd accused), Mohamed Alango Durbu (3rd accused), Burfa Jara Dokota (4th accused) and Abdi Godana Jara(5th accused) are jointly charged with one count of **Murder** contrary to Section 203 as read with section 204 of the Penal Code. The particulars of the offence are:

“All five accused, on the 28th day of October, 2007, at Bangale Trading Center, within Tana River District, Coast Province, jointly murdered ADOW DAKANE DHIDOW.”

The facts of the prosecution case are that Habiba Dakane, (PW1) Leila Abdi,(PW2), Asli Dayib (Pw3) and Adow Dakane Dhodow, the deceased in this case ,were all travelling together with 10 other men and women in a public service vehicle (matatu). The matatu was being driven by one Abdi, (not a witness) from Buka to Bangale. According to Habiba, Leila and Asli, they left Buka at 2 pm and arrived at Bangale at 4pm. The three witnesses stated that within 200 meters of the Bangale town and Bangale Police Station, the vehicle came across huge rocks, tree trunks and tyres blocking the road. Just before the vehicle stopped, a group of people numbering between 10 and 15 emerged from nearby bushes, at a bend on the road. They flagged down the vehicle. These 3 prosecution witnesses testified that no sooner had the vehicle stopped than the 2nd accused pulled out Adow, the deceased, by his collar, assisted by the 1st accused who held the deceased by his legs. Habiba, Asli and Leila testified that the two accused (1st and 2nd) stabbed the deceased with Somali swords which each had. It was alleged that the 3rd, 4th and 5th accused and the others with them also attacked the deceased with swords, bows and arrows. Upon witnessing the attack, each of the three eye witnesses Habiba, Leila and Asli, ran away for their lives towards Bangale Shopping Centre. They all landed at the Bangale Police Station together with other passengers from the matatu they were travelling in. They reported the incident to the Police.

P.C Osere, PW5 in the case, was among the police officers at Bangale Police Station who received the report. P.C Osere testified that the reportees reached the station at 5pm and made the report of the murder. The officer stated that the reportees, who were many, also disclosed that they knew some of the attackers and where they could be found. PC Osere testified that he and 30 other police officers accompanied the reportees who led them to a house within 50 meters from the scene of attack. When the door to the house was not opened

for them despite knocking, P.C. Osere testified that they broke in, entered and arrested four men. He identified the four men as the 1st, 3rd, 4th and 5th accused. P.C. Osere stated that the witnesses identified the four to them as among the attackers. From the arrested group P.C. Osere testified that three swords, P. exhibit 2 and two arrows heads, P. exhibit I were recovered.

The police officer could not tell from whom among the 4 accused persons the exhibits were recovered.

Senior Sergeant Kamau, PW4 in the case testified that he and other police officers arrested the 2nd accused on 1st March, 2009, one day after the said accused was identified to him by members of public as one of the men wanted for this murder. The arrest came almost two years after the attack.

The post mortem on the body of the deceased was conducted one day after the attack, by Dr. Boniface Musila of Garissa Provincial General Hospital. Dr. Musila testified that the body had multiple cut and stab wounds, most extending deep to the bones. The wounds were on the head, chest, and abdomen and on the back of the deceased. The doctor stated that he recovered two arrow heads, one on the back embedded on the thoracic spine on the upper back bone, and another embedded in the chin in the nasal bridge on the face. He testified that he formed the opinion that the cause of death was severe bleeding due to multiple cut wounds. The Doctor stated that he did not rule out poisoned arrows as part of the cause of the deceased death.

PW6 Retired Sergeant Ponda was the Investigating Officer of the case. He produced the two arrow heads, P. exhibit I and explained that the longer of the two arrow heads was recovered by the doctor from the face of the deceased, during the post mortem examination. Sergeant Ponda testified that the second arrow head was handed over to him by police officers from Bangale Police station, one day after the incident. Sergeant Ponda produced three Somali swords, P. exhibit 2 and stated that he received them from police officers from Bangale Police Station from whom he took over the case, one day after the incident.

The accused persons were placed on their defence after the close of the prosecution case. Each accused person opted to make an unsworn statement, none of them called any witnesses.

The 2nd accused in his defence stated that he was arrested as he travelled on the road and that he was informed that the cause of the arrest was because he had killed somebody. The 2nd accused denied having killed anyone and stated that he had no knowledge of any other thing.

The 3rd accused in his defence stated that he was at home when he was arrested and that he did not know the reason for his arrest. The 3rd accused continued to testify that he was transported to Garissa Police station where he was told that he murdered somebody. He denied having killed anybody.

The 4th accused stated that he was at home with his wives and children when several police officers surrounded them and arrested him. The 4th accused stated that no one told him what he had done or why he was being arrested. He stated that he was beaten before being locked up at Bangale Police Station.

The 5th accused on his part testified that he was at home with his children when he was arrested and taken to Bangale and later to Garissa Police Stations. He stated that he was later brought to Nairobi. He testified that he did not know why he was arrested.

The 1st accused gave his defence last on the request of his counsel. In his defence, the 1st accused stated that he was at home with his co-accused at the time of his arrest. He testified that the co-accused were all his neighbours. The 1st accused stated that it was around 6 pm when they were surrounded and arrested by several police officers. He continued to testify that they were all taken to Bangale Police station and later the same night transferred to Garissa Police Station and much later to Nairobi. He said that all he had stated is all he knew about the

case.

Mr. Ndungu for the 1st, 3rd, 4th and 5th accused and Mr. Mochache for the 2nd accused each gave submissions in the case which I have considered. Ms Mwanza for the state also gave submissions which I have also considered.

I have carefully considered the evidence adduced by both the prosecution and the defence in this case. The charge facing the accused persons is that of murder contrary to section 203 as read with 204 of the Penal Code. Section 203 of the Penal Code provides:

“Any person who with malice aforethought causes the death of another by an unlawful act or omission is guilty of murder.”

The prosecutions must prove that the accused persons with malice aforethought caused the death of the deceased person in this case. The burden of proof lies with the prosecution to prove the charge against the accused beyond any reasonable doubt. The prosecution relies on the doctrine of principle offenders and common intention in support of their case. The prosecution case is that the accused persons jointly formed an intention to attack the deceased person and cause his death or grievous harm.

There are several issues which emerge in this case and I will consider them seriatim. The most important issue in this case is that of identification. Habiba, Leila and Asli all three identified the five accused persons as among those who attacked and fatally wounded the deceased. Their evidence is that they knew the five accused persons before. The evidence of identification was therefore that of recognition.

In regard to the evidence of recognition the court of appeal in the unreported case of Cleopas Otieno Wamunga Vs. Republic CA No. 20 of 1989 observed as follows:

“We turn to the more troublesome part of this appeal namely the appellant’s conviction on counts 1 & 2 charging him with the robbery of Indakwa (p.w. 1) and Lilian Adhiambo Wagude (p.w. 13). Both these witnesses testified that they recognized the appellant among the robbers who attacked and robbed them.

... What we have to decide now is whether that evidence was reliable and free from possibility of error so as to found a secure basis for the conviction of the appellant. Evidence of visual identification in Criminal Cases can bring about miscarriages of justice and it is of vital importance that such evidence is examined carefully to minimize this danger. Whenever the case against a defendant depends wholly or to a great extent on the correctness of one or more identifications of the accused which he alleges to be mistaken, the Court must warn itself of the special need for caution before convicting the defendant in reliance on the correctness of the identification. The way to approach the evidence of visual identification was succinctly stated by Lord Widgery, C.J., in the well known case of R V Turnbull (1976)3 All E.R.549 at page 552 where he said:

“Recognition may be more reliable than identification of a stranger; but, even when the witness is purporting to recognize someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made.”

The importance of carefully considered the evidence of identification, even where it is that of recognition, when it is the evidence relied upon by the prosecution whether wholly or to a large extent, and which the accused has denied cannot be emphasized enough. As observed by the court of appeal in yet another case, Toroke Vs. Republic CA No. 204 of 1987(unreported):

“...It is possible for a witness to believe quite generally that he had been attacked by someone he knows yet be mistaken so the possibility of error is still there whether it be a case of recognition or identification...”

I have considered the evidence of each of the eye witnesses. Habiba on her part stated that the incident took place at 4pm and therefore in broad day light. Habiba testified that she was seated behind the driver’s seat, and next to the deceased. The deceased sat next to the rear passenger door of the matatu. Habiba stated that the matatu had its full capacity of passenger at the time of the attack. Habiba testified that the vehicle was a Nissan matatu. Going by her evidence therefore, at least two passengers sat on the seat in the front part of the vehicle behind the seat where she sat. She stated that after their vehicle came to a stop, the 2nd accused came to her side of the vehicle and pulled out

the deceased by the shirt collar. Habiba testified that the 1st accused held the deceased by the legs and assisted the 2nd accused to pull him out of the vehicle. That evidence was corroborated by Leila and Asli, especially in regard to the identification and the roles played by the 1st and 2nd accused during this attack.

Habiba in her evidence said that she had known the 1st, 2nd and 5th accused for 7 years prior to the incident, as members of the society living in the same Town where she lived. Habiba testified that she was able to see that the 2nd accused led the attack on the deceased followed by the 1st accused, before the rest of the group set upon the deceased with swords, bow and arrows.

Leila on her part identified each of the accused and stated the roles each of them played in the attack. Leila contended that she knew the accused persons for a period of 7 years prior to this attack, as people living in the same town where she lived.

Asli on her part stated that she saw and recognized all five accused persons because they stood on the front row of those who ambushed their vehicle. Asli testified that as the matatu she was travelling in approached the blocked section of the road, the five accused were the ones standing in front of the group of attackers. Asli stated that for that reason, she saw them clearly as the vehicle stopped. Asli described how 2nd accused led 1st accused in pulling the deceased out of the vehicle and in attacking him with Somali swords. Asli testified that she had known the five accused persons for 10 years prior to the attack. Asli stated that she had also known the deceased person for a similar period.

Mr. Ndungu for the 1st 3rd 4th and 5th accused urged that the three eyewitnesses, Habiba, Leila and Asli were too shocked and terrified to safely identify anyone because the attack was sudden, vicious and unexpected. The learned counsel submitted that due to the sudden attack the three eyewitnesses did not have sufficient time to observe and identify the attackers.

Mr. Mochache for the 2nd accused urged that the evidence of recognition was crucial and that no doubts should be left in the mind of the court regarding the accused guilt. On the issue of identification Learned counsel relied on the Court of Appeal Case of **Dzombo Chai Vs. Republic CA No. 256 of 2006**. The Court of Appeal in that case held.

“This court has said on many occasions that the evidence of identification or recognition of an accused person should be tested with the greatest care and should be watertight to justify a conviction. It is also recognized that there is a possibility for a witness to be honest but mistaken and for a number of witnesses to be all mistaken (see Kiarie V. Republic (1984) KLR 739). Further, although evidence of recognition is more satisfactory, more assuring and more reliable than the identification of a stranger (see Anjononi v R (1980) KLR 50), such evidence should not only be credible but also should be free from any possibility of error before it can be relied on to implicate an accused person.”

“The appellant was arrested in about September 1999 while the offence was committed on 18th August 1997 nearly 2 years later. There was no explanation why the appellant and his brother were not arrested immediately”

“In the result, the appeal is allowed, the conviction quashed sentence set aside. The appellant shall be set at liberty forthwith unless otherwise lawfully held.”

In regard to the issue of burden of proof Mr. Mochache relied on the case of **Bhatt Vs. Republic (1957) EA 332** at pg 333 where the Court of Appeal for Eastern Court held:

“ The onus is on the prosecution to prove its case beyond reasonable doubt and prima facie case is not made out if, at the close of the prosecution, the case is merely one “which on full consideration might possibly be thought sufficient to sustain a conviction.”

“Some evidence irrespective of its credibility or weight, sufficient to put the accused on his defence. A mere scintilla of evidence can never be enough; nor can any amount of worthless discredited evidence.”

“It was not safe to allow the conviction on the first count to stand. Appeal allowed on first count.”

Mr. Mochache urged that since no explanation was given why it took more than 2nd accused, the case showed he resolved in 2nd accused favour. For that proposition counsel relied on the case of **Kandie Vs. Republic CA No. 21 of 1996** . The court held as follows:

“In R. v Uberele (1938) 5 EACA 58 the former Court of Appeal for Eastern Africa held that “the court is entitled to presume that the evidence which could be and is not produced would if produced be unfavourable to the person who with holds it”.

We hold that in view of the contentious nature of the evidence before her, the learned Judge of the superior court ought to have given the appellant the benefit of doubt. We accordingly allow the appellant’s appeal.”

I have carefully considered the cases cited by the learned counsel.

Ms. Mwanza, Learned Counsel for the state urged the court to find that the evidence adduced by Habiba, Leila and Asli against the accused persons was that of recognition since all three eye witnesses knew the accused persons before the attack. Counsel urged that each of the three eye witnesses clearly recognized the accused persons and that each of them narrated the roles played by the accused persons during the attack, and that therefore the prosecution had discharged its burden of proof.

I have carefully scrutinized and analyzed the evidence of Habiba, Leila and Asli in regard to their evidence of recognition. Habiba identified the 2nd accused as the one who opened the rear passenger door of the Nissan matatu they were travelling in. She identified the 2nd accused as the one who held the deceased by his collar and the 1st accused as one who held the deceased by his legs and forcefully removed him from the vehicle. Habiba testified that the 1st and 2nd accused each stabbed the deceased with Somali swords which each had. The 2nd accused was the first to stab the deceased and he did so by stabbing him on the neck.

I have considered that in her evidence Habiba stated that she was seated next to the deceased and that the deceased sat next to the side passenger door. Habiba was therefore seated at close proximity to the deceased, and close enough in my view to those who pulled out the deceased from the vehicle. Leila stated that she was seated next to Habiba in the vehicle just before the attack .She was also very close to the door through which the deceased was forcefully pulled out and therefore sat at equally close proximity to the attackers.

I considered that the incident took place between 4 and 5pm. It was therefore in broad daylight. For the identification of the 1st and 2nd accused, I found the evidence of Habiba candid and that she vividly narrated the sequence of events. The lighting conditions at the scene of incident were good for positive identification.

As I have already stated, Habiba’s evidence regarding the involvement of the 1st and 2nd accused was corroborated by Leila and Asli. Both of them gave evidence which was consistent with that of Habiba in all material particulars. They equally impressed the court as candid, truthful and reliable witnesses. There was variation in the evidence of Asli, who in addition to the rest of the evidence was able to state the exact area the deceased was stabbed by the 1st accused. Asli specified that after the 2nd accused stabbed the deceased on the neck, the 1st accused stabbed him near the kidney area. Habiba and Leila did not specify the part of the deceased’s body that the 1st accused stabbed. That failure is not significant given the manner in which the attack was carried out, the number of people involved in the attack and the findings of the doctor during post mortem.

The injuries noted on the body of the deceased are consistent with the testimony of Habiba, Leila and Asli. The doctor found multiple stab wounds all over the body including the head, face, left flank, chest, abdomen and back.

I have considered that apart from Habiba and Leila the other eye witness, Asli, did not mention where in the vehicle she was seated. I have however taken note of the fact that the vehicle in which these witnesses were travelling in at the time was a Nissan matatu. I take judicial view of the fact Nissan Matatus have glass windows all around the vehicle and persons seated inside such vehicle have a fairly clear view of the outside of the vehicle. For Habiba and Leila, they were seated one seat from the window where the deceased was seated. They had a clear view of the attackers from their evidence.

Mr. Ndungu submitted that the eye witnesses were crumpled up in the matatu and could therefore not see clearly to be able to identify anyone. All 3 eye witnesses testified that the vehicle carried its capacity number of passengers of 15 including the driver. That means all passengers had a seat. They could not have been crumpled up or obstructed from their view as suggested by Mr. Ndungu. I dismiss that suggestion as speculative, misleading and not supported by the evidence. I have cautioned myself of the fact that Asli did not disclose where she sat in the vehicle just before the ambush. Having done so, I am satisfied that the witnesses were truthful and worthy of belief. I believe them when they say that they were in a position to clearly see those who attacked them, that their view was not obstructed and that their ability to identify was unimpeded.

I regard to the 5th accused, Habiba identified him as being present and in the company of the 1st and 2nd accused and others during the attack. Habiba identified him and the 1st and 2nd accused as the only ones she recognized in the group of attackers and said she had known them for 7 years prior to the incident. Habiba mentioned the 3rd and 4th accused in passing giving the impression that her identification of these latter accused persons was an afterthought.

On her part Leila identified the 5th accused as having used bow and arrows to stab the deceased. Leila stated that she had known him for 7 years prior to the incident. Asli in her evidence stated that she had seen the 5th accused among the group of attackers. Leila and Asli also identified the 3rd and 4th accused as among those they could recognize in the group which attacked them. Habiba's and Asli's evidence was that they saw the 3rd and 4th accused persons in the group of attackers. Only Leila described the manner in which the two attacked the deceased. According to Leila the 3rd accused shot the deceased with bow and arrows while the 4th accused used a Somali sword.

On the issue of identification I find that all three eye witnesses identified the 1st 2nd and 5th accused persons clearly and succinctly, and that the conditions of identification were good for positive identification of the accused. The identification of the Habiba as against the 3rd and 4th accused was an afterthought and I disregarded it. Leila and Asli were very clear of the role played by the 3rd and 4th accused. Asli on her part said that she saw the five accused person leading the pack of attackers just before their vehicle stopped. Her evidence of identification is strengthened by the fact that she had clearly seen the attackers just before the attack, and therefore just before she had reason to be afraid, confused, shocked or any such emotion came over her. I find that Asli's evidence of identification was strong. I find that the evidence of identification of Asli and Leila as against the 3rd and 4th accused persons was positive.

Mr. Ndungu for the 1st, 3rd, 4th and 5th accused persons submitted that there was bad blood between the clan of the accused persons and the clan of the deceased person. The accused persons are Orma while the deceased, PW1, 2 and 3 are from Warde clan. Ms. Mwanza for the state made no submissions in reply.

The matter of a grudge existing between the Warde clan and Orma clan was put to Habiba, Leila and Asli. Habiba and Leila agreed that there had been war between the Warde clan and Orma tribe at the time the incident took place. Asli on the other hand testified that she was unaware of any grudge between the two tribes. There is an inconsistency between the evidence of Habiba and Leila on the one hand and Asli on the other in regard to tribal wars in the area at the material time. I have carefully considered this factor and concluded that the inconsistency does not affect the prosecution case in any way. I was satisfied that the incident in question did not take place in a war setting.

Rather it was a specific event in which a matatu plying a specific route was ambushed by a group of 10 to 15 men who forcefully took one of 10 men in it and brutally wounded him. Habiba, Leila and Asli were clear that there were many Warde clansmen and women in the vehicle that day, including the three of them. Yet these were left free and only the deceased was attacked. It is safe to regard the attack as an act of brutality rather than a clan war.

Mr. Mochache has raised issue with failure by the police to explain why the 2nd accused his client, was not arrested until almost 2 years after the event. Counsel has urged the court to discharge the 2nd accused on account of prosecution failure to call evidence to explain the said delay.

I have considered the case of **Dzombo Chai v Rep CA No. 256 of 2006** (unreported), relied upon by Mr. Mochache, with due respect to Mr. Mochache, the *ratio decidendi* of the cited case is not that an accused person should be set free if the prosecution fails to explain the delay in arresting the accused person. The court's decision was that the dying declaration of the deceased in the case, in which the prosecution relied upon, mentioned the name of **CHIVATSHI CHAI**. The court observed that it was not satisfied that the name declared by the deceased, referred to the Appellant to the exclusion of all else. The cited case does not apply to the instant case.

I do agree that the prosecution ought to have called evidence to explain why it too long to arrest the 2nd accused. That omission cannot however justify an acquittal or discharge of the accused for this serious offence. I dismiss the Learned Counsel's suggestion as having no sound legal foundation or basis.

As stated the prosecution relied on the doctrine of common intention and principle offender. I find that the evidence adduced by the prosecution establishes that the five accused persons with others whom the three eye witnesses did not recognize or identify ambushed the vehicle which the three eye witnesses and twelve other persons were travelling in, by blocking the road with boulders, tree trunks and tyres. They then flagged down the vehicle as it emerged from a bend or curve on the road. Upon stopping, the 1st and 2nd accused pulled out the deceased and immediately set upon him with swords and arrows. The prosecution has established that the deceased died of injuries suffered during this attack on the same day of the incident. I find that the accused persons formed a common intention to ambush the matatu vehicle and attack the deceased. I am satisfied that the prosecution has established beyond any reasonable doubt that the accused persons had formed the necessary malice aforethought to cause grievous harm and or to commit the offence of murder. By setting upon deceased with swords, bows and arrows the accused persons and those with him must have known that the injuries they inflicted could caused grievous harm upon the deceased or even cause his death.

The accused persons in their defence put forward alibi as their defence. Apart from 2nd accused, the rest said they were found at their homes with their families. The fact that the accused were found in their home area is consistent with the prosecution evidence that the accused persons mounted the attack within 50 meters from their homes and therefore it was not difficult for the accused persons to retreat to their houses after the attack. The weapons recovered from the 1st, 3rd, 4th and 5th accused even though the prosecution did not identify which of the accused had which weapon, was consistent with the kind weapons that could have inflicted the injuries on the deceased. I did consider the inconsistency in the evidence of the Investigating Officer Sergeant Ponda, the arresting officer for 1st, 3rd, 4th, and 5th accused, PC Osere and Dr. Musila who performed the post mortem. The inconsistency regarded the 2 arrow heads produced as P. exhibit I. Pc Osere testified that he and his colleagues recovered the arrow heads from the accused persons (except 2nd accused). Sergeant Ponde stated he was handed over of one of the arrow heads by PC Osere while the other he got from Dr. Musila during post mortem. Dr. Musila on his part testified that he recovered arrow heads, one on the nasal bridge of the deceased and the other lodge on the upper back thoracic region of the deceased.

I am of the view that Dr. Musila must be the one who gave the correct position. That position is backed by the post mortem report. He

filled at the time of the post mortem. PC Osere and Sergeant Ponda were not accurate. Having considered their evidence I did not find the inconsistency of PC Osere and Sergeant Ponda as material or going to the substance of the case for two reasons. One, the written document in the form of the post mortem form gives an assurance of accuracy and correctness of findings and facts. Two, the lapse between the date the two Police Officers arrested the accused and took over investigations, respectively, and the date they testified in court was long enough for the officers to forget some facts due to effluxion of time. The situation is worsened because Police Officers no longer seem to keep police note books in which details of actions they take are recorded for ease of memory. The police officer today has the daunting task of being required to recall finer details of work they carry out in the field from memory. It is a sorry state of affairs as by the time they make statements the police officer may have been involved in a lot of police work to recall details. Their evidence was that at the time, they were involved in an "operation" due to tribal clashes; it is not a surprise that certain details of work they did, even though material can be forgotten or over looked. I find the inconsistency insignificant and so disregarded it.

I have examined the evidence of alibi against the rest of the evidence. PC Osere was very clear that he and his colleagues found the 1st, 3rd, 4th and 5th accused in one house in which they had locked themselves up. He testified that the accused persons refused to open even when the police officers identified themselves. That conduct is inconsistent with that of innocence. Had the accused been found seated with other family members as they alleged in their defence maybe the situation could have been different. The defence of alibi is an afterthought as in addition to the evidence of arrest which proves otherwise, it has been raised very late in the day that is at the time that the accused persons gave their defence. I do not believe the accused persons. I reject their defence in total.

In regard to the 2nd accused person, he was arrested alone almost two years after the event. The accused has merely denied the charge or knowledge of the murder. The evidence against him is very strong. I find that he was in fact the ring leader of the attack. He was the first to pull out the deceased from the vehicle. He was the first one to strike the accused. I reject his defence in total. I find the evidence against the 2nd accused watertight.

After carefully considering the evidence adduced in this case I am persuaded beyond any doubt that the five accused persons viciously attacked and wounded the deceased person on the date in question; that the deceased suffered severe wounds at the hands of the accused persons from which he succumbed and died on the same day of the attack.

I find the five accused persons guilty of the charge of murder contrary to section 203 of the Penal Code and convict them accordingly

Dated this 28th day of January, 2010.

LESIT, J.

JUDGE

Read signed and delivered in the presence of;

Elisha.....Court Clerk

All Five Accused

Ms. Mwanza For the State

Mr. NdunguFor 1st, 3rd, 4th and 5th Accused

Mr. Mochache.....For the 2nd Accused

LESIT, J.

JUDGE