



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**  
**CRIMINAL CASE 51 OF 2008**

**REPUBLIC**

**VERSUS**

**HILLARY MULI KIMEU.....ACCUSED**

**RULING**

1. Hillary Muli Kimeu is charged with four (4) counts of murder contrary to section 203 and 204 of the Penal Code. It is alleged that on 24.7.2006, he, jointly with others not before the court, murdered Thomas Muli Mulwa, Musee Tito, Festus Musya Mulwa and Musyoka Vindu, the deceased persons in each of the four counts. He denied the charge and the evidence tendered was as follows;
2. The deceased persons according to PW1, Dominic Mule Mbaluka, Chief of Twaandu Location, Makindu Division of Kibwezi District were young persons who came from outside the Location on the material date. They were found cutting twigs popularly used as traditional tooth brushes. Because of past insecurity in the area, and being strangers, they were apprehended by a vigilante group and the accused person, who was the Assistant Chief of the area, went to interview them. Having done so, he took them to PW1 who looked at the identity cards of the deceased persons and then released them to the accused person. The next day, the accused person informed him that the said persons had all been burnt by members of the public and they had died.
3. PW3, Daniel Muindi David saw members of the vigilante group viz Mwema Willy, Mutua Kavivia and Kakuta Kioo interrogating the deceased persons and saw them taking them away to the accused person's office. PW4, Benard Kakuta Kioo said that he was among the twenty (20) or so members of the vigilante group but he denied knowledge of the fate of the deceased persons after he handed them over to the accused person. PW5, Fredrick Kanyulu Kasuva gave similar evidence but said that the deceased persons were burnt at Mitendeu market, four (4) kms away from Kavete market where the accused had an office and where he interrogated them.
4. PW8, PC Joseph Mutie took photographs of the deceased persons and produced them in court. The victims charred beyond recognition.
5. PW10, PC Charles Kipchumba investigated the case and reached the conclusion that the accused person had a hand in the deaths. He however arrested him only on 22.11.2006, four months after the incident. Other suspects had been arrested earlier but were released for lack of evidence, in his opinion.
6. A Postmortem conducted in the case by Dr. Wambugu Benjamin on 2.8.2008 indicated that the deceased persons died of

extensive burns.

7. The other witnesses who testified had no material evidence to offer and the question that I must ask is whether a prima facie case has been made out to warrant the accused person being put on his defence. I have taken time to read the evidence on record and there is no doubt that the deceased persons were burnt to death at Mitendeu market, four (4) kms away from Kaveta market where the accused person had an office as Assistant Chief. There is no doubt that the accused person had contact with the deceased persons at Kaveta Market. How did they reach Mitendeu? I cannot tell. When they were eventually found dead, there is no evidence that the accused person either personally or by instigation caused those deaths.
8. PW10, C.I.P Kipchumba was at pains to explain to this court the basis for his opinion that the accused had a hand in the deaths. He denied that he acted on suspicion but that is precisely the point.
9. I am aware that at this stage, only prima facie evidence is necessary. But evidence based on suspicion cannot stand at this stage or at any point in the trial. I am convinced that there is nothing to ask the accused person to respond to. A case such as this one should have been initially investigated, properly, and where there are too many gaps in evidence, as they are, then an Inquest should have been held and persons found to be culpable would be charged, it at all. C.I.P Kipchumba failed to explain why he took more than four months to investigate the case and why he had no eye witness to an offence that took place in public and in broad daylight.
10. I see no reason to say more; the accused person has no case to answer and is acquitted at this stage. He may be released unless he is otherwise lawfully held.
11. Orders accordingly.

Dated and delivered at **Machakos** this **11<sup>th</sup>** day of **February 2010**.

**Isaac Lenaola**

**Judge**

In the presence of; Mr. Omirera for Republic

Accused present

**Isaac Lenaola**

**Judge**