



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Criminal Case 58 of 2006

REPUBLIC.....PROSECUTOR

VERSUS

DAVID MWANGI ALIAS MONGOYO..... 1ST ACCUSED
STEPHEN GITAU KAMAU ALIAS MUNDO..... 2ND ACCUSED
PETER KIBE MBURU ALIAS KENYATTA 3RD ACCUSED
JAMES MWANGI GICHERU 4TH ACCUSED

J U D G M E N T

The four accused persons, **DAVID MWANGI WAITHAKA, Alias MONGOYO; STEPHEN GITAU KAMAU, Alias MUNDO; PETER KIBE MBURU, Alias KENYATTA;** and **JAMES MWANGI GICHERU** were charged with the **offence of murder contrary to section 203 as read with section 204 of the Penal Code.**

In the charge sheet, it is stated that the four accused persons, jointly with others not before the court, murdered JUSTUS KANGATU MURAGE, on 15th February 2006. The offence is said to have been committed at Gatwikira Village, in Thika District. The trial commenced before Ojwang J., who received the evidence of all the twelve prosecution witnesses. The learned trial-Judge was then transferred to Mombasa, and he could therefore not conclude the hearing of the case. The duty then fell upon my shoulders.

PW 1, PETER KANGATU MURAYA, is the father to the deceased. He testified that on 16th February, 2006 at about 12.00 noon, a note was delivered at his home, where it was handed over to his daughter. At that time, PW 1 and his wife were at their shamba.

When they got back home and read the note, they learnt that their son had been killed at Gatwikira Village. PW 1 and his wife, Julia Wanjiku, first went to the home of his son, Justus.

Muthoni, the wife to Justus informed PW 1 that Justus had left his home at about 4.00p.m. on the day before. Muthoni explained to her parents-in-law that Justus had gone get his money, amounting to KShs.40,000/-, from Susan.

PW 1 was well aware that that sum was to go into the business of buying and selling milk, because Muthoni had discussed the issue with PW 1, at the request of Justus. PW 1 had promised to help Justus and Muthoni to identify the sale outlets, if they had put together the funds.

Muthoni knew the place where Justus was to collect the money from. She therefore escorted PW 1 to Gatwikira village, Thika, where they arrived at about 3.20p.m.

PW 1 went with his wife, the wife of the deceased and the son of the deceased, upto the place where Justus had been killed. According to PW 1, there was some blood about 2 metres away from the house of Susan Wanjiku (PW 3).

PW 1 then accompanied the police officers who had collected his son's body, to Ngati Police Post. On arrival at the police post he inquired about the identity of the person who had reported the incident. He was told that PW 3 had made the report at about 1.48a.m. PW 1

was also told that PW 3 was accompanied by PW 5 and two men.

Later, when the body had been taken to Thika District Hospital, PW 1 viewed it. He noted many cuts on the head; one cut on the shoulder; one cut on the neck, which left only a small “line” connecting the neck to the body; one cut across the eye; about three fingers cut-off, the left hand which had only bones, after the flesh was removed.

Meanwhile, PW 1 had been informed by Mr. Wainaina, the Assistant Chief of the area within which the incident occurred, that Justus was beaten to death between 3.00p.m. and 9.00p.m.

According to PW 1, the said Assistant Chief told him that he had reported the incident to the police.

At 7.30p.m. PW 1 left the scene of crime, in the company of police officers. They went to Kandara, where PW 3’s husband lived. He was arrested in his house.

The Assistant Chief then provided the police with information about PW 3 being holed up at a house in Gatwikira. But when the police went to that house, PW 3 was not there. However, the police arrested three men from a house that was opposite the house in which Susan had been suspected to be hiding.

After the three men were arrested, the police said that there would be an operation.

Lydia (PW 5) and Mwangi (the 1st accused) were then arrested. Thereafter, Susan (PW 3) was also arrested.

During cross-examination, PW 1 said that he was aware that his son had given money to PW 3. Although he did not know exactly when PW 3 was given the money, he knew that the sum was KShs.40,000/-.

PW 1 was convinced that PW 3 was not innocent. He therefore did not understand why the police set her free.

PW 2, J.M, was a young girl, who was 11 years old as at 21st May 2007, when she testified in this case. She is a brother to Hesborne Muguthi (PW 10): And both of them are the children of Susan Wanjiku (PW 3).

PW 2 said that she, PW 10 and PW 3 went to bed at about 9.00p.m. on 15th February 2006. By about 10.00p.m. PW 2 was still not yet asleep, although she noted that both PW 3 and PW 10 were already asleep. She then heard people talking outside their house. The said people also banged on the door, three times.

PW 2 then woke up her mother, who inquired from those outside, who they were. PW 3 also tried to open the door, but found that it was locked from outside. PW 3 then opened the window, and she, together with her two children went out of the house, through the window. The three of them then walked towards the front of their house, where they saw many people quarrelling.

According to PW 2, there were six people out there. However, of the four accused, she only recognized the 1st, 2nd and 3rd accused.

It was her evidence that the 1st accused had a panga, whilst the 3rd accused had a hammer.

PW 2 said that Muturi had a metal rod, whilst Muthiani was also present.

It was her testimony that there was bright moonlight, which enabled her to see what was happening. She saw the 1st accused cut the deceased with a panga. And when the deceased fell down, the 3rd accused hit him with a hammer. Thereafter, the 2nd accused also hit the deceased, as he lay on the ground. But PW 2 did not identify the tool, implement or weapon which the 2nd accused used to hit the deceased.

PW 2 shouted at the assailants, saying;

“I have seen you.”

And although they saw her, the assailants are said to have not said anything in response to PW 2's statement.

Meanwhile, PW 3 screamed, whilst PW 10 ran away, crying: that is what PW 2 said.

In cross-examination, PW 2 said that her mother (PW 3) does not sell changaa. But she also added that all the four accused used to go to their house, to drink changaa.

PW 2 also said that the deceased had been away from home for about one week, prior to the incident.

PW 3, SUSAN WANJIKU, was first married to Martin Gitau Karanja. However, after twelve (12) years, the marriage broke up. She later befriended the deceased, and the two of them lived together for about eight (8) years.

On 15th February 2006, PW 3 was at home together with her two children, (PW 2 and PW 10). As PW 3 was pregnant, she retired to bed early, leaving the children studying.

At about 10.00p.m, PW 2 woke up her mother, as their door was being knocked from outside. PW 3 thought that it was the deceased who was knocking. But when he called out to him, there was no response.

PW 3 then tried to open the door, but found it locked from outside. She therefore instructed the children to place a table next to the window, and all three of them climbed out onto the table, and out, through the window.

Once they were outside the house, they found the deceased in the midst of a group of men. The 1st, 2nd and 3rd accused were in that group.

PW 3 saw someone push the deceased, causing him to fall. She also saw the other men throwing stones at the deceased. And, after about 30 minutes, when the deceased was quiet, the other men left the scene.

PW 3 went back into the house and lit a candle. Using the candle, he went very close to where the deceased was lying down. She noted that blood was oozing from a cut on his neck. PW 3 also noticed that there were several cuts on the hand of the deceased. She called out to him, but he did not respond.

PW 3 then went to seek a phone, which she could use to obtain some means of transport, to ferry the deceased to hospital. She first went to PW 5's house, who then accompanied her to PW 4's house. It is PW 4 who called for a taxi, which arrived after a few minutes.

However, when the taxi driver saw the injuries on the body of the deceased, he declined to ferry him to hospital. In his view, that was a police case.

Thereafter, the taxi driver drove PW 3 to Ngati Police Post, where she reported the incident.

During cross-examination, PW 3 admitted that she used to sell chang'aa. She also said that all the four accused persons used to be her customers. She was able to see them clearly because;

“there was lots of light from the moon.”

At the time she called the taxi, PW 3 says that the deceased was still alive.

PW 4, PETER NGANGA NJOROGI, is a shopkeeper at Gatwikira. At about mid-night on the night of 15th/16th February 2006, he was asleep in his house, when his window was banged.

PW 4 was told by the person who was banging his window, that they needed help in getting a taxi to ferry a sick person. PW 4 testified that PW 3 is the person who sought his help to call for a taxi.

PW 4 phoned PW 7, a taxi driver. When the taxi arrived, PW 4 and the 1st accused accompanied the driver to go and fetch the injured

person. When they reached him, PW 7 flashed his torch light on the person, which enabled him to see that the man had lost a lot of blood. PW 7 concluded that the person was dead. He therefore refused to ferry him to the hospital, as he believed that that would be matter to be handled by the police.

During cross-examination, PW 4 said that he was shocked when he saw the injuries on the deceased, because PW 3 had only talked about someone who was sick.

PW 5, LYDIA MUTHONI KANGATA, was the wife to the deceased.

On 15th February 2006, the deceased left PW 5 at their home, where they lived as husband and wife. The deceased informed PW 5 that she was going to Gatwikira, to collect KShs.40,000/- which he had lent to PW 3.

Although PW 5 tried to dissuade the deceased from going to Gatwikira, because she felt that it was late in the day, he said that he had to go.

By her estimation, the deceased should have reached Gatwikira by about 5.00p.m. PW 5 then prepared supper and thereafter waited for her husband to return. But he did not turn up.

On the next day (16th February 2006), at about 1.00p.m., PW 1` arrived at PW 5's house. PW 1 was accompanied by his wife.

They asked PW 5 for her husband. She told them that he had gone to Gatwikira, but had not returned. It is then that they told her that her husband had been killed.

PW 5 then accompanied her parents-in-law to Gatwikira, where they saw the body.

However, PW 5 said that PW 3 was not at home by the time she (PW 5) got there. It was the evidence of PW 5 that the police did not find PW 3 until later, because PW 3 had disappeared.

PW 6, MURANGA ANTHONY MWAURA, is a brother to the deceased. On 18th February 2006, he identified the body of the deceased, for purposes of post mortem examination.

PW 7, FRANCIS KARIUKI WAINAINA, is a taxi driver. He received a phone-call from PW 4, asking him to go to Gatwikira, where he would carry an ailing person from.

PW 7 was joined by 3 persons, who were to show him exactly where the sick person was. When they reached the spot, PW 7 flashed a torch, and he saw injuries on the face and hand of the "sick person."

Although PW 7 did not know whether or not the "sick person" was dead or alive, he declined to ferry him because he thought that that was a police case. He therefore only helped to ferry PW 3, with two other persons, to the police station.

PW 8, DR. JOHN IRUNGU KAMAU, conducted the post mortem on 18th February 2006.

He noted that the deceased had deep head cuts; a deep left shoulder cut; amputated right index finger; skin and muscles removed from the left upper arm and mid fore-arm, exposing the elbow joint.

Internally, the organs and systems were normal.

The doctor's conclusion was that the cause of death was severe head injury, leading to massive loss of blood.

The post-mortem examination was done on 18th February 2006. And according to the doctor, putrefaction had set in, because the injuries had been inflicted on the victim some 8 days before that date.

He also explained that the skin and muscles to the left arm were probably removed through friction, which may have occurred when

the deceased was pulled over a rough surface.

PW 9, P.C. STANLEY MUIRURI was a police officer who was attached to the Ng'ati Police Post, at the material time.

At about 1.48a.m. on 16th February 2006, he was at the Report Officer, when PW 3, PW 5 and Michael Mwangi Karanji arrived and made a report.

PW 9 told the court that it was PW 3 who told him that she needed a motor vehicle to ferry someone to hospital. She told him that the person was beaten up by villagers, who responded to screams of PW 3 and her two children. She said that they had screamed because someone banged their door at 10.00p.m.

As there was no vehicle at the police post, PW 9 advised the reportees to look for other means to transport the victim to hospital.

At about 1.00p.m. on 16th February 2006, PW 9 arrived back at the Police Post, from an appointment in Nairobi. He learnt that the victim had died.

Thereafter, the police arrested one suspect at Kandara and seven other suspects from Gatwikira. Amongst those who were arrested were PW 3 and PW 5.

According to PW 9, when the first report was made by PW 3, she said that she did not know who had beaten up the victim, as he was beaten up when PW 3 was inside her house.

In his assessment, the victim must have already been dead, by the time the report was made to him.

PW 9 also testified that PW 3 asserted that although the deceased had lent her KShs.40,000/-, she had already repaid the said loan.

His investigations also indicated that the deceased had been at PW 3's house earlier, during the day, on 15th February 2006. Therefore, when the deceased was beaten to death, at about 10.00p.m, that was the second time for him to go to PW 3's house, on the same day.

PW 10, HESBONE MUGUTHI, was a young boy, aged nine (9) at the time he testified. He is the younger brother of PW 2, J.M.

PW 10 corroborated the evidence of both PW 2 and PW 3, regarding the banging on their door, on the night of 15th February 2006; and also about PW 2, PW 3 and he getting out of the house, through the window, because the door was locked from outside.

When PW 10 was asked about the lighting, he said;

“Not full moon- so I could not see very well.”

Nonetheless, PW 10 saw the 1st accused with a machete; 2nd accused with an iron bar; 3rd accused with a knife and 4th accused with a slasher.

When Muturi had hit the deceased, causing him to fall down, PW 10 saw the 1st accused cutting him with the machete. PW 10 then took off.

He and PW 2 spent the night at the home of a neighbour, “Mkorino”. Early the next morning, he together with his mother and sister saw the body of the deceased, still lying at the place where he had been assaulted. Two stones lay on him, and there was a lot of blood.

According to PW 10, he knew the assailants very well because they used to come to drink changaa at their house. Even on the material day, in the morning, PW 10 saw them. And it was his recollection that they only left at about 1.00p.m.

Interestingly, PW 10 said that the deceased had left their house on the same morning, to go and work at the quarry.

PW 11, PC GABRIEL MUOKI, was a police officer attached to the Ng'ati Police Post, at the material time.

On 17th March 2006, he received information that some suspect was seen at Chesoni village, Yatta Division Machakos. He proceeded there, together with PC. Albanus Kimanthi.

They were then assisted by the village elders and the vigilante group, to get to the house where the 1st and 2nd accused were hiding. The said two accused persons were arrested on 2nd April 2006, at about 7.30p.m., as they were having supper in a private house.

By the time of arrest, some witnesses had already implicated the two accused persons, in their statements. In particular, the said suspects had been named in the statements of PW 2 and PW 10, who had said that they witnessed them assaulting the deceased.

PW 11 also confirmed that several suspects, who had been arrested and interrogated, were later released by the police.

PW 12, SGT. JULIUS MALIT, was attached to the Scenes-of-Crime section of the Criminal Investigation Department (CID), Thika. When they received a report about an adult who was murdered at the Gatwikira area, he went to Ng'ati Police Post, from where he was immediately taken to the scene.

At the scene, PW 12 took five photographs, depicting the body of the deceased from various angles. The photos were produced as exhibits in the course of this trial.

After the twelve witnesses testified, the accused persons canvassed a Preliminary Objection, premised on section 72 (3) of the Constitution. After giving due consideration to the objection, Ojwang J. held that the prosecution had tendered a reasonable explanation for the delay in arraigning the accused persons before the court. The learned Judge therefore declined the invitation of the accused, to terminate the proceedings. Instead, he directed that the trial would proceed to its logical conclusion.

Thereafter, the prosecution did not call any other witnesses.

When the accused persons put forward their respective defences, each of them opted, as they are entitled to do, to give unsworn testimonies.

DW 1, DAVID MWANGI WAITHAKA, said that on 15th February 2006, at about 9.30p.m., he left his house, to go and buy cigarettes. Whilst outside, he met PW 3, PW 5 and the 4th accused, who asked him where they could get a vehicle to ferry a sick person to hospital.

It is DW 1 who told them to go PW 4's place.

When PW 4 had arrived, DW 1 accompanied PW 4, the driver and the 4th accused, to go for the sick person.

DW 1 corroborated the evidence of taxi driver (PW 4); that the latter declined to carry the deceased in his car, as he believed that that was a police case.

DW 1 was arrested on 4th April 2006, at Kasioni, Matuu. He said that the only reason for his arrest was that he was a Kikuyu, by tribe.

At that time, DW 1 says that he and the 2nd accused were working in Matuu.

DW 2, STEPHEN GITAU KAMAU, said that on 15th February 2006, he was invited by a Mr. Ocharo, who was an employee at "Kenya Cutting", to join him for a drink.

According to him, the drink was chang'aa, and they enjoyed it at the house of PW 3. He and Ocharo then went to their respective homes.

On the next day, DW 2 went with DW 1 to work, as usual.

And on 4th April 2006, DW 2 says that he and DW 1 worked as usual, before returning home at 7.30p.m. He and DW 1 were then arrested because they were Kikuyus. Apart from that, they were told that the reason for their arrest would be disclosed later.

From Kasioni, they were transported to Thika Police Station. Later, they were charged with murder.

DW 3, KIBE MBURU, said that he did go to have some chang'aa, at PW 3's house, on the evening of 15th February 2006.

After having two glasses of the drink, he started tripping over some customers, whereupon PW 3 ordered that he be removed. When he was removed, he went home, had supper and then slept.

On 16th February 2006, he went to work at the quarry, as was usual.

At about 1.00p.m., when sill cutting stones at the quarry, he heard that somebody had been killed at PW 3's house, on the previous night. He therefore joined the crowd that went towards PW 3's house.

Whilst DW 3 was nearing the house, he (and the crowd) saw a vehicle being driven off. And they learnt that the body of the person who had been killed, had been ferried away in that vehicle.

On 25th March 2006, DW 3 was arrested, at his place of work. He was told that the police needed his help in some small matter. DW 3 said that he knew nothing about the murder herein.

DW 4, JAMES MWANGI GICHERU, was at his house on the night of 15th February 2006, when his door was knocked at about 9.20p.m.

When his wife checked on the person knocking, she learnt that they were PW 3 and PW 5. The two ladies were looking for a mobile phone, as they wished to call for a vehicle to take a sick person to hospital.

As DW 4 had no phone, he escorted the two ladies to his landlord. But the landlord was not in. The landlord's wife assisted them, by knocking on her neighbour's door. The neighbor was PW 4, who then phoned PW 7, a taxi driver.

DW 4 corroborated the rest of PW 7's evidence, regarding the journey to PW 3's place, to collect the patient; and how PW 7 declined to carry the patient when he saw the extent of his injuries.

DW 4 also told the court that he did accompany PW 3 to Ng'ati Police Post, where PW 3 reported the incident to PW 9. Thereafter, he went back home, and slept.

But at 3.30a.m., on 16th February 2006, he was arrested by the police, after he confirmed that he was one of those who had accompanied PW 3 to the Police Post, to report the incident, on the previous night.

In effect, although it is clear that the accused persons were not strangers to the alleged eye-witnesses, and even though the prosecution witnesses alleged to have seen them assaulting the deceased, the accused persons denied being involved in the murder.

DW 1 and DW 4 both said that they encountered PW 3 when she was already looking for help to get a vehicle, which would ferry the victim to hospital. In other words, they assert that they met PW 3 after the deceased had been assaulted.

On the other hand, DW 2 and DW 3 said that they had been drinking chang'aa, at PW 3's house early in the evening of 15th February 2006. But both of them say that they were at their respective houses at the time the deceased was assaulted.

In a nutshell the accused persons put forth their respective alibis.

The question that this court now needs to ask itself, inter alia, is whether or not the evidence adduced by the prosecution was sufficient

to displace the alibis. That question arises because when an accused person raises, as his defence, an alibi, he does not assume any obligation to prove it. The burden of proof does not shift to him at all. He remains innocent until and unless the prosecution leads sufficient evidence to prove his guilt.

In this instance, the 1st and 2nd accused admitted having been arrested at Kasioni, in Matuu. However, each of them also said that they were residents of Gatwikira Village, Thika District.

As they were, apparently, not living at their respective homes in Gatwikira, at the time of their arrest; yet they had been living in Gatwikira at the time the deceased was killed, PW 11 said that the police believed those two accused persons to have been in hiding. Indeed, PW 11 explained that the police had searched for the said accused in Mombasa, before going to Kasioni Village, Yatta Division, Machakos.

Were they simply working at Kasioni, in the normal course of events, or had they re-located to that place, so as to hide from the long arm of the law?

The three eye-witnesses said that they all had known the accused persons before the incident. That would not be surprising, as they all hailed from Gatwikira Village. And more so, because PW 3 used to sell chang'aa, which drew many people to her place. Indeed, the 2nd and 3rd accused admitted that on the material day, they did drink some chang'aa at PW 3's place.

Therefore, when PW 2 and PW 3 said that they recognized the 1st, 2nd and 3rd accused persons; one would be inclined to believe them. That is especially so, because those two witnesses said that there was bright moonlight on the material night.

If that be the case, the eye-witnesses should have been able to see the same person, doing the same things to the deceased.

But whereas, PW 2 said that the 1st accused had a panga, which he used to cut the deceased; whilst the 2nd accused hit the deceased when the latter was on the ground; and the 3rd accused hit him with a hammer; PW 3 only talked of the deceased being caused to fall, by being pushed. PW 3 then saw the assailants stoning the deceased.

The question that arises is why those two witnesses talked about having seen different happenings.

Could it be, because the light from the moon was not that bright? That question is significant because PW 10, who was also an eye-witness, did expressly say that there was no full moon, so that he was not able to see clearly.

Meanwhile, all three eye-witnesses did confirm that PW 2 and PW 10 approached the scene much closer than their mother, PW 3.

Perhaps that might explain why PW 3 did not see the exact item, weapon or tool which each of the assailants were carrying.

But then, that would mean that if PW 10 could not see that clearly, then PW 3's ability to see clearly was even less.

As PW 10 was near enough, he saw the 1st accused with a panga; the 2nd accused with an iron-bar; the 3rd accused with a knife; and the 4th accused with a slasher.

Curiously, the PW 2 had not seen the 3rd accused with a knife. She had said that the 3rd accused had a hammer.

And as for both PW 2 and PW 3, they did not see the 4th accused at the scene. But PW 10 saw that accused holding a slasher.

Should the court accept as accurate, the version given by PW 10 or that given by PW 2 and PW 3?

Of course, if, as PW 10 said, the moon was not full, so that he was not able to see clearly, that should imply that he did not see clearly. He therefore could not have been sure about the details of what he allegedly saw.

That would be consistent with the testimony of PW 2, who said that PW 10 ran away when he saw the deceased fall down.

PW 10 also testified that the deceased had been at PW 3's place from the morning of 15th February 2006. He said that the deceased left PW 3's place that morning, to go to work at the quarry.

Yet PW 1, PW 2 and PW 3 all made it clear that the deceased had been away for at least one week before 15th February 2006. According to those witnesses, as well as PW 5, the deceased left the house of PW 5 on the evening of 15th February 2006. Prior to that date, the deceased had been living with his wife, in Kandara, for at least one week.

In the circumstances, if the deceased only left Kandara at about 4.00p.m. on 15th February 2006, he cannot also have been at Gatwikira, Thika, on the morning of that day.

If the deceased was at Gatwikira all through, including the morning of 15th February 2006, there would be nothing at all that the prosecution would use, to suggest the reason for the attack on him, that night. It is only if the deceased did leave the Kandara home on the evening of that day, for the reason that he was going to recover the loan of KShs.40,000/- from PW 3, that the prosecution could suggest that the killing was attributable to that loan. Indeed, it is only in that scenario that PW 1 and his wife could insist that PW 3 was not innocent.

But yet, the prosecution has provided the court with two versions of evidence. And this court has no legal basis for choosing one version over the other.

If, as the alleged the eye-witnesses clearly recognized the persons who assaulted the deceased, it defies logic that even one of them (PW 3) was arrested. So also her husband, who was at all times not cited as having been present at the scene of crime.

Furthermore, the steps taken by the police, to arrest several other persons, who were later released, is a reflection of the uncertainty on the part of the police, about the identity of the persons who assaulted the deceased.

Many questions remain unresolved. For instance, whether the 1st accused or the 4th accused was assisting PW 3 to get a taxi, which was to take the victim to the hospital. The taxi driver (PW 4) said so: But PW 3 did not.

Now, if the eye-witnesses had already recognized the assailants, it would defy all logic that PW 3 would nonetheless rely on some of the said assailants in not only striving to take the victim to hospital, but also in making a report to the police.

To my mind, there is absolutely no doubt about the fact that the deceased was murdered in a very brutal manner.

But because the evidence on record does not conclusively address the doubts raised by the defences, I hold that it would unsafe to convict the accused persons. Perhaps, had the Investigating Officer given evidence, he would have helped the court unravel some of the outstanding doubts.

However, as matters stand, I have no alternative but to hold, as I now hereby do, that the prosecution has failed to prove beyond any reasonable doubt, that the accused were guilty of the murder as charged.

I therefore find the accused "Not Guilty". The case against them is duly dismissed. And I order that they be set at liberty forthwith, unless they are otherwise lawfully held.

They are hereby acquitted.

Dated, Signed and Delivered at Nairobi, this 29th day of April, 2010.

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FRED A. OCHIENG

JUDGE