



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT KAKAMEGA  
Criminal Case 30 of 2008**

**REPUBLIC.....PROSECUTOR**

**V E R S U S**

**ALFRED KISIA INIDA ..... 1<sup>ST</sup> ACCUSED  
WYCLIFFE KISIA ELENGWA ..... 2<sup>ND</sup> ACCUSED  
SHEM LUGADIRO MUKUNGULA ..... 3<sup>RD</sup> ACCUSED  
MIKE CHOGO OYUGI ..... 4<sup>TH</sup> ACCUSED**

**R U L I N G**

1. The accused persons herein, Alfred Kisia Inida, Wycliffe Kisia Elengwa, Shem Lugadiro Mukungula and Mike Chogo Oyugi were all charged with the offence of murder contrary to Section 203 and Section 204 of the Penal Code. It was alleged that on the night of 27<sup>th</sup> and 28<sup>th</sup> June 2008 at Kituri village, Madzuu Sub-location, Mungoma Location, Vihiga District of the western Province, they jointly murdered Geoffrey Mishieba.
2. The evidence tendered was that the deceased was mentally challenged but was still engaged in the business of drawing water and being paid for carrying it to the users. That on 27.6.2008 at 9.00 a.m., according to **PW1, Constance Andimu**, the deceased left for the 1<sup>st</sup> accused's home to seek the task of fetching water to be used at a funeral in that home. He did not return to his home but at 5.30 p.m., the 1<sup>st</sup> accused asked PW1 where the deceased was but she did not know where he was and the 1<sup>st</sup> accused left. The next day, PW1 was informed that her step-son, the deceased, was found injured near a church in the locality. She went to the scene, took him home but he died before he could be taken to hospital.
3. **PW2, Margaret Musimbi**, the deceased's biological mother received news of the deceased's injuries and together with PW1, they took him home where he died. She was present on 3.7.2008 when the post-mortem was carried by one Dr. Kurgat at Vihiga District Hospital.
4. **PW3, John Ahaza Misheba** was one of the first persons to see the injured man and was the one who informed PW2, and PW3 of his condition. He was present when the deceased died and was present when the post-mortem was conducted.
5. **PW5, Francis Ondimu Mandala** recalled that on 27.6.2008 at 2.00 p.m. he saw one Arusi Yeda and one Kibande Endere beating the deceased as they struggled over a water Jerican. The two kicked the deceased repeatedly and he started bleeding in the mouth and nose. PW5 rescued the deceased and took him to the local Assistant Chief's home and left him there. Later he got information that the injured man, who he knew as mentally challenged, had died.
6. **PW6, Cpl Frankline Marangu** received the report of the deceased's death, visited the scene, took the body to the Vihiga Hospital Mortuary, investigated the case and he concluded that the four accused persons had a hand in the deceased's death and charged them accordingly.
7. From the above evidence, it is wholly unclear to me how it came to be that the accused persons are in this court. Of all the six witnesses

who testified, only the PW6 stated as follows;

**“The four accused persons went to look for the deceased and at his home they found his mother. They told her they were looking for him to beat him because he had taken their jerricans.”**

8. That evidence was not corroborated by PW1 or PW2. In fact PW1 only mentioned the accused persons as having come to look for the deceased but stated that it was only the 1<sup>st</sup> accused who enquired of the deceased’s whereabouts and then she added;

**“I didn’t ask why the accused was looking for the deceased.”**

9. Where did PW6 get the information that the deceased was beaten by the accused persons? Certainly not from PW1 who was the only witness to have had contact with the accused persons on the material day. In any event and according to PW5, the persons he saw beating the deceased were persons other than the accused persons. It has not been contested that Arusi Yeda and Kibande Endere did so. Why were they not investigated?

10. In any event, I am not satisfied that a prima facie case has been made out against the accused persons. They are acquitted of the charge of murder and they shall be released unless they are otherwise lawfully held.

11. Further, the O.C.S. Vihiga is ordered to re-open the investigations of the murder of Geoffrey Mishieba and the role of Arusi Yeda and Kibande Endere, if at all be investigated.

12. Orders accordingly.

*Delivered, dated and signed at Kakamega this 21<sup>st</sup> day of April, 2010*

**ISAAC LENAOLA**

**J U D G E**