



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CRIMINAL CASE NO. 16 OF 2004**

**REPUBLIC ..... PROSECUTION**  
**-VERSUS-**  
**MUMBO MBUTO NYAWA**  
**alias MUNYONGO ..... ACCUSED**  
**JUDGEMENT**

The accused **MUMBO MBUTO NYAWA** alias **MUNYONGO**, was arraigned in the High Court in Mombasa on a charge of **MURDER CONTRARY TO SECTION 203 as read with S. 204 OF THE PENAL CODE**. The prosecution called a total of six (6) witnesses in support of their case. At the close of the prosecution case the accused was put to his defence. I have now carefully considered the record of the trial before the High Court. I note that when the trial commenced before Hon. Justice J. Sergon on 26<sup>th</sup> April 2006, there were assessors present in court as was then required by S. 262 of the Criminal Procedure Code. However following the passing of the **Statute Law (Miscellaneous Amendment) Act 2007** which outlawed the use of assessors in murder trials, the Hon. Justice Sergon did discharge the assessors on 26<sup>th</sup> November 2007. Following the transfer of the Hon. trial Judge to Nyeri I took over the hearing of this case and proceeded to hear four (4) witnesses in the absence of assessors. Following decision in the Court of Appeal this was an irregularity. In the case of **BERNARD KINOTI M'ARACHI –VS- REPUBLIC** where in a case where the assessors were discharged before the conclusion of the trial, the Court of Appeal declared the trial a nullity. I am indeed quite surprised that neither **MR. CHIDZIPHA** for the accused nor **MR. ONSERIO** for the State raised this issue in their final submissions to the court. I am quite alive to the fact that the trial had been concluded as well as the fact that the accused has spent six (6) full years in custody since March 2004. However I am bound by this decision from the Court of Appeal. This trial in which the assessors were discharged mid-trial was a nullity. I must therefore declare a mistrial and I hereby order that the trial begin de novo.

**Dated and Delivered in Mombasa this 15<sup>th</sup> day of November 2010.**

**M. ODERO**  
**JUDGE**

Read in open court in the presence of:-  
 Mr. Siruma holding brief for Mr. Chidzepha  
 Mr. Onserio for State

**M. ODERO**  
**JUDGE**  
**15/11/2010**