



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL CASE NO. 20 OF 2005
REPUBLIC PROSECUTION
-VERSUS-
NGUMA CHIRIMA alias SULEIMAN ACCUSED

RULING

The Accused herein **NGUMA CHIRIMA alias SULEIMAN**, faces a charge of Murder Contrary to Section 203 as read with S. 204 of the Penal Code. The accused entered a plea of '**not guilty**' to the charge and his trial commenced on 19th February 2007 before Hon. Mr. Justice L. Njagi. The learned judge heard a total of eight (8) witnesses all of whom were heard in the presence of Court Assessors as was then required by the S. 262 of the Criminal Procedure Code. Hon. Justice Njagi was transferred to Nairobi in August 2009 whereupon I took over the matter and proceeded to take the evidence of the two (2) remaining witnesses, this time in the absence of the assessors. This was in view of the fact that the requirement for Assessors had been done away with following the enactment of the '**Statute Law (Miscellaneous Amendments) Act No. 7 of 2007**'. The prosecution finally closed their case on 30th September 2010. The matter came up for submissions on 25th October 2010 at which point **MR. GICHANA**. Advocate for the accused pointed out that dismissal of the assessors nullified the whole trial. **MR. MUTETI** learned State Counsel conceded this point. I am guided by the decision of the Court of Appeal in the case of **BERNARD KINOTI M. ARACHI -VS-REPUBLIC CRIM APPEAL 114 of 2008**. In this case their lordships held that in a case commenced in the presence of assessors the accused acquires a right to have his trial heard and determined with the aid of the same assessors. Any dismissal of the assessors before the conclusion of the trial effectively denies the accused this right and nullifies such a trial. This is precisely the situation obtaining in this case. Notwithstanding the repeal of S. 262 of Act No. 7 of 2007, the accused was entitled to have his trial completed in the presence of assessors. The continuance of the trial in the absence of such assessors invalidated the whole process. As such I do declare a mistrial in this case and I hereby direct that the case begin de novo.

Dated and Delivered in Mombasa this 15th day of November 2010.

M. ODERO
JUDGE

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

M. ODERO
JUDGE
15/11/2010