



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CRIMINAL CASE NO. 1 OF 2005**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**JOSEPH KIELE MULI ..... ACCUSED**

**RULING**

The Accused **JOSEPH KIELE MULI** was arraigned before the High Court Mombasa on 6<sup>th</sup> January 2005 on a charge of **MURDER CONTRARY TO SECTION 203 as read with S. 204 OF THE PENAL CODE**. The particulars of the charge were that

***“On the 5<sup>th</sup> day of December 2004 at Kidomaya ‘B’ Village in Kwale District within Coast Province, jointly with others not before court murdered ITAA KASILI MUSUNGULI”***

The Accused entered a plea of **‘Not Guilty’** to the charge and his trial commenced on 24<sup>th</sup> April 2007 before **HON. MR. JUSTICE J. SERGON** who took the evidence of twelve (12) prosecution witnesses. At the time the trial started assessors were present in court pursuant to the provisions of S. 306 of the Criminal Procedure Code. However following the passing of the Statute Law (Miscellaneous Amendments) Act in the year 2007 the requirement that assessors sit in on murder trials was done away with Justice Sergon therefore discharged the assessors on 27<sup>th</sup> November 2007. However following the ruling by the Court of Appeal in the case of **BERNARD M’RACHI –VS- REPUBLIC CRIMINAL APPEAL 114 of 2008** this was held to be unprocedural. As such Justice Sergon in his ruling dated 25<sup>th</sup> June 2010 declared a mistrial and directed that the case begin de novo. Dates for the hearing given but the State failed to avail a single witness. On three subsequent dates the State was unable to avail any witness. Article 50(2) (e) of the Constitution of Kenya provides

***“Every accused person has the right to a fair trial, which includes the right –***

- 1. to have the trial begin and conclude without unreasonable delay”***

In this case the accused has been in remand custody for over five (5) years awaiting the conclusion of his case. On three occasions the State have been unable to proceed due to absence of witnesses. No valid reason is given why the witnesses are not in court. To further delay this matter will infringe the accused’s

rights to a speedy trial. No evidence has been presented by the State in the re-trial. I therefore enter a verdict of '**not guilty**' under S. 306(1) of the Criminal Procedure Code and acquit the accused.

**Dated and Delivered in Mombasa this 20<sup>th</sup> day of December 2010.**

**M. ODERO**

**JUDGE**

Read in open court in the presence of Mr. Ngigi holding brief for Mr. Njiru for Accused

Mr. Onserio for State

**M. ODERO**

**JUDGE**

**20.12.2010**