

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

Criminal Case 31 of 2004

REPUBLIC.....RESPONDENT

V E R S U S

SILVESTER ODHIAMBO NORA.....1ST ACCUSED

JOHN MALOBA.....2ND ACCUSED

R U L I N G

The two Accused persons are charged with the offence of murder contrary to **section 203** of the **Penal Code** as read with **Section 204** of the same Code. The Prosecution's case is that on the 28th day of July, 2004 at Nyapera village, Itenje Location, Butere/Mumias District, Western Province, the two accused persons murdered **HASSAN NYONGESA**.

The Prosecution called nine (9) witnesses and closed its case. PW1, **LAWRENCE MAKOKHA ONYANGO** did testify that on 29th July, 2009 he was at his homestead sleeping when he heard noise outside and he woke up. There was a funeral at his home as his child Brian Olangulo had died. When he woke up he found Silvester Nora and John Maloba (Accused 1 & 2) beating the deceased. He separated them and the deceased ran towards his home.

The evidence of PW1 is corroborated by that of PW2, Vincent Muhinji and that of PW3, Hassan Odhiambo. These two other witnesses were at the funeral.

PW9, Dr. Edward Milengwa did a Postmortem on the deceased and formed the opinion that the deceased suffered from severe nervous system impairment resulting from injuries. The deceased had a bruised right eye and had bled extensively under the skin at the chest.

Having analyzed the Prosecution's evidence, I have no doubt that the accused have a case to answer. I therefore find that the accused persons have a case to answer and are put to their defence.

Dated, Signed and Delivered at Kakamega this 31st day of May, 2009.

SAID J. CHITEMBWE

J U D G E