



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**Criminal Case 29 of 2004**

**REPUBLIC ..... PROSECUTOR**

**V E R S U S**

**PATRICK ATOZO MASIZA ..... ACCUSE**

**S E N T E N C E**

The accused herein was charged with murder contrary to section 203 as read with section 204 of the Penal Code. The accused pleaded not guilty to the charge. On 2/7/2009 the prosecution reduced the charge to that of manslaughter contrary to section 202 as read with section 205 of the Penal Code and the accused pleaded to the lesser charge whose facts are that on the 9<sup>th</sup> day of August, 2004 at Gambogi village, Tigoi Sub-location in Vihiga District within Western Province, the accused unlawfully killed Daniel Atia Masalia.

On 9/8/2004 at 6.00 p.m. the deceased arrived at his home when the accused visited him. Both deceased and accused used to work as touts at Gambogi bus stage. The deceased asked for his share of the day's collection. A brief scuffle ensued and the accused hit the deceased with his fist once on the stomach and ran away.

The deceased fell down and was assisted by his mother to his house. He died after a few hours. Police were notified and took the body to Vihiga District Hospital mortuary. A post mortem was conducted on 11/8/2004 by Dr. Dagaye who opined that the cause of death was severe internal bleeding due to rupture of the spleen caused by trauma.

Mr. Ondieki, counsel for the accused submitted that the accused is very remorseful and that the deceased was his friend. They used to work together and that he had gone to the deceased's home to give him his share of the day's collection when the misunderstanding arose. The accused hit the deceased once and ran away. The accused is 35 years old, has a wife and 2 children under the age of 12 years. He has two young brothers and an old mother who depend on him.

I have considered the circumstances of the case whereby the deceased and the accused were friends. There was no intention to harm the deceased and what happened was unfortunate. The accused was arrested on 19/8/2004 and has been in custody for 4 years and almost 11 months. Taking into account the period the accused has been in custody I do not think a custodial sentence would be of any use. I hereby set the accused at liberty unless otherwise lawfully held.

Dated, delivered and signed at Kakamega 15<sup>th</sup> day of July, 2009

**SAID J. CHITEMBWE**

**J U D G E**