

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

Criminal Case 29 of 2008

REPUBLIC.....PROSECUTOR

V E R S U S

GERALD CHIBAYI ESIKURI 1ST ACCUSED

DENNIS AMANYA AWAY.....2ND ACCUSED

MELZADECK NGOTA3RD
ACCUSED

S E N T E N C E

The three accused persons were charged with murder contrary to **section 203** as read with **section 204** of the Penal Code. They denied the charge. The prosecution reduced the charge to manslaughter to which the accused pleaded guilty.

The particulars of the offence are that on the 18th day of June, 2008 at Mungoya village, Emukola Sub-location, West Bunyore location in Emuhaya District of Western Province, the three accused unlawfully killed **HARRISON MUKAKA**.

On 18th June, 2008 the deceased who was the accused's uncle arrived home drunk at 8.00 p.m. He started beating his young son and his wife who was 9 months pregnant. Then ran to the deceased's mother's house but the deceased followed them and went on to beat them together with his mother using a whip. The three accused came out from their respective houses in response to the screams made by the deceased's mother, wife and child. The deceased turned onto the three accused and started whipping them. They managed to restrain him, tied him with a rope and took him to Ebukolo A.P. Camp where the deceased was placed in the cells. Unfortunately the deceased passed away on the same night. A postmortem done by Dr. Limo revealed that the deceased's death was due to cardiorespiratory failure secondary to hemorrhage and ruptured spleen.

Mrs. Muleshe for the accused submitted that the accused are remorseful and that their intention was to restrain the deceased and not to kill him. The third accused is 15 years and was to join a polytechnic having just completed his standard eight exams. The other two accused are orphans.

Taking into account the circumstance under which the deceased met his death, it is clear that none of the accused intended to kill the deceased. The accused persons responded to the screams by the deceased's wife, mother and child. They took him to the police that night. The deceased was drunk and fought everyone. I am convinced that a custodial sentence is not ideal under the circumstances taking into account the fact that the accused persons have been in custody for over one year. The accused are hereby set at liberty and shall be free unless otherwise lawfully held.

Delivered, Dated and Signed at Kakamega this 23rd .day of September, 2009

SAID J. CHITEMBWE

JUDGE