



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT BUNGOMA**  
**CRIMINAL CASE 32 OF 2008**

**REPUBLIC.....PROSECUTOR**

~VRS~

**NDIWA PSITET SAIMA.....1<sup>ST</sup> ACCUSED**

**CHEPKOI STEPHEN KIBET.....2<sup>ND</sup> ACCUSED**

**BEN MESHACK TUTEI.....3<sup>RD</sup> ACCUSED**

**BONFACE CHEPTEEK KIMUTAI Alias KAMALIZA.....4<sup>TH</sup> ACCUSED**

**RULING**

The accused were charged in two counts of murder contrary to sections 203 and 204 of the Penal Code. The particulars of count 1 were that between 18/7/2007 and 19/7/2007 at Chesikaki sub-location in Mt. Elgon District of the Western Province they jointly with others not before the court murdered Patrick Chesetu. In count 2 it was alleged that during the same time and area they jointly with others not before court murdered Geoffrey Chepkech.

The prosecution called five witnesses. They were PW1 Carol Chesiro Sitati, PW2 Florence Chermatai, PW3 Robin Chesere Munika, PW4 Timothy Wafula Makokha and PW5 Dr. Habel Alwanga. PW3 and PW4 were hostile witnesses and of no value to the prosecution. PW1 and PW2 are the widows of the deceased in count 1. The evidence of PW2 was that on 18/7/2007 at about 7.00 p.m the 2<sup>nd</sup> accused came home and left with the deceased (in count 1). The following day they found the deceased body dead with injuries, about three kilometers from home. No evidence was given regarding the circumstances that led to the death of the deceased in count two.

The evidence of PW5 was that while at Bungoma District Hospital he performed post mortem on the bodies of the two deceased on 23/7/2007. The body of Patrick Cheseto had multiple bruises and abrasions on the face and head; friction burns on the gluteal aspect bilaterally as a result of being pulled; and ligature mark on the neck running predominantly on the right side. It had no internal injuries. Cause of death was cardio respiratory failure due to strangulation (exhibit 1). Body of Geoffrey Chepkech had bruises on both sides of the neck just at the infra-auricular area and were frattered, and bruises in the forehead. Internally, there was bilateral lung collapse. Cause of death was cardio respiratory failure due to throttling (exhibit 2).

The 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> accused were not mentioned by any of the witnesses in connection with either death. I dismiss the charges against them and respectively acquit them under section 210 of the Criminal Procedure Code. The 2<sup>nd</sup> accused was not mentioned by any of the witnesses in connection with the death of Geoffrey Chepkech in count 2. On the charge he is found without a case to answer and he is acquitted under section 210 of the Criminal Procedure Code.

In connection with the death of Patrick Cheseto in count 1, I find that the 2<sup>nd</sup> accused has a case to answer

and he is consequently called to his defence.

Dated, signed and delivered at Bungoma this 24<sup>th</sup> day of July, 2012.

**A. O. MUCHELULE**  
**JUDGE**