

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

Criminal Case 31 of 2004

SILAS MAYWA HENRY **1ST ACCUSED**

VICTOR KITUYI MANIALA **2ND ACCUSED**

ERIC MANYASI WEKANYA **3RD ACCUSED**

~VRS~

REPUBLIC **PROSECUTOR**

RULING

The three accused persons Silas Maywa Henry, Victor Kituyi Maniala and Erick Manyasi Wekanya alias Siakama were charged with the offence of murder c/s 203 as read with s.204 of the Penal Code. It was alleged that on 8th April, 2004 at Chepsitati Village, Kibichori Sub-location in Bungoma District within Western Province jointly with others not before the court they murdered Coronelius Khamala Wabangana. They denied the offence.

This case was partly heard by Lady Justice W. Karanja who recorded the evidence of 10 witnesses before she was transferred. Upon taking over the proceedings, I informed all the accused persons of their right to recall any witnesses who had already testified as provided for under section 200 of Criminal Procedure Code. They elected not to recall any. I then recorded evidence from two prosecution witnesses, the Doctor and the Investigating Officer after which the prosecution closed its case. The learned counsel appearing for the accused persons have submitted that the prosecution has not established a prima facie case to warrant the accused persons offer any defence to the charge of murder.

The prosecution has proved beyond doubt that the deceased died. Dr. Mulianga Ekesa produced the post mortem report prepared by Dr. John Juma who had retired from public service. They had worked together for more than 20 years and he knew his handwriting and signature. The findings of Dr. Juma were that the deceased died of cardio respiratory arrest due to right subdural haematoma due to head injury due to trauma to the skull caused by a blunt object.

The prosecution had a duty to prove at this stage that the accused persons jointly and severally were responsible for the death of the deceased. There is evidence that the deceased, the accused persons and many others were at the home of PW7 Patrick Kubeyi taking chang'aa on the evening before the deceased was found dead. There is also evidence from PW1, Dennis Wanyonyi who is a son of the deceased that his father went home drunk and asked for food. He never told his children about any assault on him. He was left seated on a chair when his children went to sleep. In the morning he was found on the floor having fallen from the chair. There was no evidence whatsoever, that the three accused persons had any contact with the deceased after they left the home of PW7.

There is evidence that several people were arrested but subsequently released on suspicion that they were responsible for the death of the deceased. The evidence that has been presented by the prosecution falls between the same category, that the accused persons were arrested only on suspicion and there is no evidence whatsoever direct or circumstantial to link them to the death of the deceased. Indeed, the learned counsel for the Republic concedes that the evidence presented was circumstantial but that

evidence does not pass the test of circumstantial evidence required in criminal law such that, if the accused persons were to remain silent at this stage, no court can convict on that evidence. Further to the foregoing, although there was some suspicion that the 1st accused had a relationship with one Esther Koko who was also suspected to be a friend of the deceased and that the killing of the deceased was as a result of a love triangle no evidence has been adduced to establish that suspicion. In the end, I find that no prima facie case has been established by the prosecution to warrant the accused persons to defend themselves. Therefore, I find that they must be acquitted and unless otherwise lawfully held, they shall be released forthwith.

Signed, Dated and Delivered this 16th day of December, 2008.

A MBOGHOLI MSAGHA

JUDGE

Mr. Ocharo for Mr. Kituyi for 1st accused.

Mrs Mumalasi for Mr. Makali for 2nd & 3rd accused.