



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU

Criminal Case 77 of 2004

REPUBLIC.....PROSECUTOR

VERSUS

JOSHUA WILSON OTIENO.....1ST ACCUSED

MONICAH NYAMBURA OTIENO.....2ND ACCUSED

JOHN KIBAKI KAMAU.....3RD ACCUSED

JOSEPHAT KARIUKI NDUNGU.....4TH ACCUSED

JUDGMENT

The accused were charged with murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the offence were that on the nights of 12th and 13th June 2004 at Matukanio farm within Nakuru District of the Rift Valley Province, jointly with others not before court they murdered **Ann Wambui Gitonga** hereinafter referred to as “**the deceased**”.

The deceased was a young brilliant girl who had a temporary job at Gilanis Super Market where she worked as a cashier. Her brilliance can be attested to by the fact that she was the best student at Alliance Girls High School, a top National School, in the Kenya Certificate of Secondary Education Examination which she sat for in the year 2002. As a result, she was invited for a prize giving function at her former school and the guest of honour during the function gave her a personal present of Kshs.3,000/-. Her father gave her some more money and she bought a mobile phone, Nokia 3310 by make. Her mobile phone number was **0733792972** (hereinafter referred to as “**the deceased’s mobile phone number**”).

The deceased’s sister, **Millicent Wairimu Gitonga, PW12**, confirmed that she was the one who was given the money by the deceased to buy the mobile phone for her and she produced a receipt which was issued in acknowledgment of payment of a sum of **Kshs.6490/-** for the new mobile phone. She also produced the box in which the mobile phone was packed.

The deceased’s mother, **Loise Waihiga Gitonga, PW2**, told the court that the deceased used to leave home for work every day at about 7 a.m. and would go back at around 7 p.m. in the evening. On 12th June 2004, the deceased left her parent’s home in the morning, spent the day in her place of work but did not return home at the usual time when she was expected and her mother got worried and began to call the deceased on her mobile phone but she was unable to reach the deceased. The deceased’s parents were naturally worried for the safety of their daughter and made frantic efforts to trace her that night but all in vain. The following day at about 6.30 a.m. PW2 decided to go to Bahati police station to find out if the deceased could have been arrested for some reason. On the way to the police station, a few metres from

their house, she saw a body lying off the road and she identified the body as being that of the deceased.

There is no dispute that the deceased was murdered shortly after she alighted from a public service vehicle at Ahero trading centre on her way home. **PW9, Carolyn Wanja**, a young girl aged about 10 years, told the court that on 12th June 2004 at about 7 p.m. she was going to Ahero trading centre to buy paraffin. She met the deceased whom she knew very well and she greeted the deceased. The deceased was walking from Ahero trading centre towards their home. Behind the deceased the witness saw some five men who were riding on bicycles. PW9 did not know any of those men. She proceeded to the said trading centre, bought paraffin and walked back home. On the way back she did not notice anything unusual but on the following day she heard that the deceased had been murdered and her body was lying along the road near the place where she had met the deceased the previous evening.

Josephine Njeri Kagira, PW10, also testified that she saw the deceased on the 12th June 2004 at about 7 p.m. when the deceased was walking along the road from Ahero trading centre towards their home.

The deceased's father, **William Gitonga Ndugiru, PW3**, corroborated the evidence of PW2 in all material respects. He further told the court that the deceased's mobile phone used to show on its screen her first name, "**Ann**", whenever it was put on. He demonstrated the same by switching on the deceased's mobile phone which was recovered in circumstances which I will highlight hereunder.

The police were informed about the incident and they went to the scene on 13th June 2004 at about 10 a.m. According to **Chief Inspector Patrick Oduma, PW11**, who was then the Officer Commanding Bahati Police Station, the body of the deceased had deep cuts on the face. Beside the body was a pool of blood that had dried up. He called scenes of crime personnel who went to the scene and photographed the body. PW11 further stated that it appeared to him that the deceased had been murdered elsewhere and her body dropped at the place where it was found because there were no blood stains in the immediate surroundings except for the dried up blood. Besides the body were the deceased's shoes, socks, a sanitary pad and other items. When the body was taken to the mortuary it was realised that the deceased's under pants had been removed. PW2 told Chief Inspector Patrick Oduma that the deceased used to have a mobile phone but the same was not found at the scene where the body lay.

The post mortem on the body of the deceased was performed on the 22nd June 2004 at the Valley Hospital Mortuary and was conducted by Dr. Noah Oloo Kamidigo, PW1. His findings were that there were two deep cuts on the forehead, superficial bruises on the left knee and a deep cut wound on the right ankle. There were also other injuries on both legs. PW1 also noted that there was a marked gaping of the vulva exposing the vaginal canal. The doctor formed an opinion that the cause of the death was due increased intracranial pressure due to blunt force which was applied on the skull.

On 17th June 2004 **Inspector Paul Mumo, PW5**, was instructed by the Director of Criminal Investigations Department to investigate the death of the deceased. PW5 was based at the headquarters of Criminal Investigations Department at Nairobi as an Investigator and Crime Analyst. He had undergone highly specialised training in his job. He was given the deceased's mobile telephone number and he wrote a letter to Kencel Communications Ltd. (now known as Celtel Kenya Ltd.) requesting for information regarding the incoming and outgoing calls which had been made by the deceased's mobile phone between 1st June 2004 to 14th June 2004. He also requested for information showing where the subscriber was receiving or making the said calls at. He further requested for the international mobile equipment identity for the deceased's hand set. **PW4, Miriam Gikonyo**, who was working for Celtel Kenya Ltd. as a Customer Service Representative testified that upon receipt of the above request by PW5, she was authorized to supply the information to PW5. Upon receipt of the requested information, PW5 began to do surveillance on the deceased's hand set to determine if it was being used by any other line and he confirmed that the hand set was active. PW5 wrote to Safaricom Ltd. to check if the hand set was in use in their system and Safaricom Ltd. confirmed that it was. He was given a computer print out showing that on 16th June 2004 at 12:59.29 the deceased's hand set was used by a person who had mobile phone number **0722928111**. A further print out was given to him and it showed that from 18th June 2004 at 18:40.18 a mobile telephone line number **0720455893** was inserted into the deceased's hand set and the

subscriber was within Bahati area of Nakuru. A further report also showed that mobile telephone number **0722928111** was registered in the name of Mr. Josephat Okwari of P. O. Box 373 Nakuru. PW5 had been informed that the serial number of the deceased's hand set was **351458805299120**. The aforesaid computer generated print outs from Celtel Kenya Ltd. was produced in court as **P. Exhibit 5** and that from Safaricom Ltd as **P. Exhibit 10**. Using all the relevant information which he acquired from the two telecommunications companies aforesaid PW5 prepared a report and two charts which were produced as **P. Exhibit 11**.

Armed with the aforesaid information, the police continued with the investigations and on 23rd June 2004, PW5 and other police officers arrested the first accused who was in possession of mobile telephone number **0722928111**. He was arrested within Bahati area and the line had been fitted in a Motorola hand set which he had and which was produced in court as **P. Exhibit 7**. Accused one was within Ahero area, about one kilometre from the scene where the deceased's body was found. The first accused then led the police to his house where they recovered the deceased's hand set which had now been fitted with a mobile telephone line number **0720455893** which was in possession of his wife, the second accused. When the hand set was put on, the screen showed the name of the deceased, "**Ann**". The second accused was also arrested and the deceased's hand set was recovered.

The first accused told the police that the deceased's mobile phone had been sold to him by the third accused and on 23rd June 2004, the third accused was arrested. He was in possession of a mobile phone hand set, Nokia 3310 by make and it had been fitted with two mobile telephone lines numbers **0721726890** and **0734724486**. The said mobile phone was produced in court as **P. Exhibit 8**. On 24th June 2004, the first and the third accused led the police to a place where the sim card that was in the deceased's mobile phone had been thrown. It was retrieved near the junction of Nyahururu road and Karuga road about one kilometre from the place where the body of the deceased was found. Two pieces of the broken sim card were produced in court as **P. Exhibit 9** and the sim card had a unique international identification number **03032030073586**. The third accused confirmed that he was the one who had thrown the deceased's sim card at that place. This evidence regarding recovery of the sim card was corroborated by **Police Constable Nzioka Wambua, PW14**, who told the court that it was the third accused who knew the place where the sim card had been thrown. That evidence was not challenged by any of the accused persons as they did not cross examine PW14.

Joseph Kamau Kigundu, PW6, a stone dresser who was residing in a place known as "*maili tisa*" within Bahati area told the court that he had met the fourth accused in a "*changaa*" drinking den. He said that the fourth accused used to sell mobile telephone hand sets and PW6 had asked the fourth accused if he could get him one hand set and he had agreed to do so. PW6 said that sometimes in June 2004 he met the fourth accused at Ahero trading centre and the fourth accused asked PW6 if he had money to buy a mobile telephone hand set which he had. PW6 did not have money at the time and so he could not buy it. The fourth accused asked PW6 if he had seen the third accused and the witness answered in the negative. The fourth accused then went towards the house of the third accused and later in the day PW6 met the fourth accused who told him that he had sold a mobile hand set to the third accused for Kshs.2,000/- and had been paid Kshs.1,000/- and was to be paid the balance of Kshs.1,000/- later. After about a week, PW6 was arrested by the police and taken to Nakuru C.I.D. Offices and was asked to identify the fourth accused which he did. He was there after released. None of the accused challenged his evidence.

Inspector Jeremiah Musyoki, PW8, testified that on 26th July 2004 he received a report that the fourth accused whom the police had been looking for had been seen at Engashura area of Bahati. They laid an ambush and arrested him while he was sleeping in his brother's house at night. The fourth accused had been mentioned adversely by the first and the third accused.

Chief Inspector Gerald Wambugu, PW17, was the investigating officer. He corroborated the evidence of all the police officers who had testified and explained in details the circumstances under which each of the accused were arrested and the reasons for their arrest. In his cross examination by Mr. Ateya, counsel for the fourth accused, PW17 said that he interviewed the fourth accused and he did not tell him where he had obtained the deceased's mobile phone from.

All the accused elected to give sworn statements of defence. The first accused said that he was staying at Ahero in Bahati area of Nakuru and was a broker of quarry stones. He further stated that on 14th June 2004, the third accused approached him at Ahero trading centre and asked him if he wanted to purchase a mobile phone. The first accused answered in the affirmative and the third accused produced a mobile phone, Nokia 3310 by make and gave it to the first accused. He said that the third accused wanted to sell it for Kshs.2,500/- but he bargained and they eventually agreed at a price of Kshs.2,000/-. The first accused took the phone and he sent the third accused to get a deposit of Kshs.1,000/- from the first accused's wife and promised to pay the balance later. He said that the phone was not working very well and he removed a sim card from another phone which he had and tried it on the one which he had purchased. He then repaired it and gave it to his wife, the second accused.

Regarding his arrest, the first accused said that on 23rd June 2004, he met somebody who identified himself as a Mr. Ojwang and who told him that he wanted to buy a plot somewhere near Ahero. They agreed to meet later to discuss the issue and on that day at about 7.30 p.m., they met in a certain bar and while they were taking some drinks, he was confronted by several people whom he later came to understand they were police officers. One of the people put his hand in the first accused's pocket and took a Motorola mobile telephone which he had. He was asked the whereabouts of the mobile hand set which he had bought from the third accused and he said that he had given it to his wife and it was at his home. The first accused said that he took the police officers to his home and they recovered the deceased's mobile hand set and arrested his wife. He was then asked to show the police officers the third accused's house which he did. The police officers arrested the third accused and the third accused agreed that he had sold the deceased's mobile hand set to the first accused. The first accused further told the court that the third accused told him that his friend known as "**Shaban**" was the one who had sold the phone to him. "**Shaban**" was a nick name for PW6, Joseph Kamau Kigonde who was also well known to the first accused.

The first accused called a witness by the name **Josephat Makwari, DW2**, who told the court that on 14th June 2004 at about 1 p.m., he was at Ahero trading centre with the first accused and other people when the third accused showed the first accused a mobile phone Nokia 3310 by make. He said that they negotiated on the price and agreed at Kshs.2,000/-.

The second accused testified that she had been married to the first accused for thirteen years and together they had five children. She further stated that on 14th June 2004 the first accused went home with a mobile phone and told her that the same had been sold to him by the third accused at a price of Kshs.2,000/-. She said that she was given the phone and on the following day the third accused went to her house with his son called Kamau and she gave him a sum of Kshs.1,000/- as part payment for the said hand set. The second accused said that the mobile phone was not working and her husband took it to a repairer and the same was repaired and returned to her after two days. The second accused further stated that she had known the third accused for over ten years and he was their neighbour.

The third accused said that he was a quarry worker at Bahati and he was also a driver. He said that on 13th or 14th June 2004 he was with PW6, Joseph Kamau Kigonde alias "**Shaban**" in a place where they were drinking "**changaa**" and "**busaa**". He said that PW6 asked him if he wanted to buy a phone which was in possession of the fourth accused, a friend of PW6 who was with them. The third accused agreed and the fourth accused took out a mobile phone from his pocket, a Nokia 3310 by make. He said that they negotiated on the price and agreed at Kshs.2,000/-. He went on to say that the fourth accused removed a sim card that was inside the mobile phone and the third accused put his own sim card which was in another mobile phone, a Nokia 3310 which he had. He wanted to test whether the hand set that was being sold to him was working but found that the battery was very low. The third accused said that he paid a deposit of Kshs.1,000/- on that day and in particular he said that he gave the money to PW6 who in turn gave it to the fourth accused. The third accused further stated that he paid the balance of Kshs.1,000/- to the fourth accused on 19th June 2004. The third accused further told the court that on 14th June 2004, he sold the same mobile phone to the first accused at a price of Kshs.2,000/-.

When the third accused was cross examined by Mr. Gumo, Assistant Deputy Public Prosecutor, he said

that he did not know the fourth accused, he only met him on the day when he was selling the mobile phone to him. He however said that he knew the first accused very well. On examination by the court, the third accused said that he asked the fourth accused where he got the mobile phone which he sold to him from and the fourth accused said that the same belonged to him. He conceded that he did not make any profit out of the sale of the mobile phone. He further confirmed that the evidence of PW5 regarding recovery of the sim card that had been fitted to the deceased's mobile phone was true. The third accused said that he was the one who had thrown that sim card to the place where it was found and he threw it there on the day when he sold the mobile phone to the first accused.

The fourth accused said that he was a mason and was staying at Engashura farm within Bahati area. He said that he was arrested on 26th July 2004 and was not told the reason for his arrest. He further testified that he knew the third accused before his arrest as they used to meet in a place where they were drinking "changaa". He denied having sold any mobile phone to the third accused. He also denied having met PW6 in June 2004 in the presence of the third accused. He denied any knowledge of the deceased's mobile phone. He further denied that he had any knowledge of the circumstances that led to the death of the deceased. Upon cross examination by Mr. Gumo, the fourth accused said that he had known the third accused for about five years and that he used to buy stones from the third accused's quarry. He further said that he had known PW6 for about two years prior to his arrest. He denied having received any money from the third accused. On cross examination by Mr. Ngure for the third accused, the fourth accused said that he knew the home of the third accused and denied having quarreled with him. Although the fourth accused had known the third accused for sometime, he said that he did not know his name until the time when they were both arrested and charged for the present offence. The fourth accused further testified that he had never sat down to take alcohol with the third accused.

Mr. Ogonda for the first and second accused did not make any submissions as well as Mr. Ateya for the fourth accused. Mr. Ngure for the third accused submitted that the only evidence that connected the third accused to the charge which he faced was the deceased's mobile phone which he had sold to the first accused. He further submitted that that mobile phone had been sold to the third accused by the fourth accused. In his view, the only evidence that the prosecution had adduced against the third accused was circumstantial evidence which was very weak and uncorroborated and could not therefore sustain a conviction as against his client. He went on to say that the third accused had given a reasonable explanation as to how he had come into possession of the deceased's mobile phone.

Mr. Ngure dismissed the evidence of the fourth accused as untrue particularly regarding his allegation that he had known the third accused for about five years. Counsel advanced an hypothesis that the third accused may have picked the deceased's mobile phone along the road as he rode his bicycle thereon, saying that the mother of the deceased, PW2, had said that early in the morning after the death of the deceased she was overtaken by a young man who was riding a bicycle near the scene where the deceased's body was found and the young man had bent down and picked something. In my view the above hypothesis does not hold any water because the third accused did not allege that he had picked any mobile telephone anywhere. He insisted that the deceased's phone was sold to him by the fourth accused. Mr. Gumo urged the court to find that the doctrine of recent possession was applicable as against all the accused persons as they were found in possession of the deceased's mobile phone so soon after the commission of the offence.

The court summed up the entire prosecution and defence evidence to the assessors as by law required. The first assessor's verdict was that all the accused were not guilty while the other two assessors were of the view that only the fourth accused was guilty. It is trite law that a judge is not bound by the opinion of assessors, even when they have given a unanimous opinion but in such an instance a judge is required to explain sufficiently the reasons for his disagreement with the assessors' opinion. The Court of Appeal so held in ***KIHARA VS REPUBLIC [1986] KLR 473***.

This being a joint trial against four accused persons, it is imperative that I carefully consider the case against each of the accused person and determine whether he or she is guilty as charged or not, see ***MUNYOLE VS REPUBLIC [1985]KLR 662***.

From the evidence adduced by the prosecution witnesses, the deceased was, prior to her death, working as a cashier at Gilanis Super Market, Nakuru, as she awaited admission to a local University. On 12th June 2004, the deceased left her place of work at around 6 p.m. and boarded a “**matatu**” and alighted at Ahero trading centre. Both PW9 and PW10 saw the deceased on the material day at about 7 p.m. as she walked from the “**matatu**” stage towards their home which was about one and half kilometres away. PW9 greeted the deceased and she answered and PW9 proceeded towards Ahero shopping centre. After a few metres she met five men riding on bicycles behind the deceased. She did not know those people. That place where PW9 met the deceased was about four hundred metres from the deceased’s home. The deceased would have taken about ten minutes to get home but that was not to be. She was attacked by some unknown people and physically assaulted, raped and eventually killed. Her body was then dumped a few metres from their home at the edge of the road. In the course of that ordeal, her mobile telephone, Nokia 3310 by make, **serial** number **351458805299120** was stolen. It had been fitted with a mobile telephone line number **0733792972**.

From the evidence of PW5, the deceased’s mobile phone was recovered from the second accused. The second accused was the wife to the first accused. The second accused told the police that the mobile phone had been given to her by her husband, the first accused. The first accused testified that he had bought the mobile phone from the third accused at Kshs.2,000/- and had given it to his wife, the second accused. In the above circumstances, does possession of the deceased’s mobile phone by the first accused a few days after the brutal killing of the deceased connect her to the murder of the deceased? I do not think so. The second accused gave a reasonable explanation as to how she came to be in possession of the deceased’s mobile phone. The prosecution did not adduce any other evidence to connect the second accused with the commission of the offence. I hold that the prosecution has not proved its case against the second accused.

As for the first accused, he bought the deceased’s phone from the third accused on the 14th June 2004 and the third accused admitted that he was the one who sold the same to the first accused. The first accused had inserted his mobile line number **0722928111** into the deceased’s mobile phone on 16th June 2004. From 18th June 2004 he fitted another telephone line number **0720455893**. The evidence that was given by PW5 regarding those numbers was not challenged at all. However, there was no evidence to suggest that the first accused knew or had any reason to believe that the said mobile phone belonged to the deceased. There was also no evidence to suggest that the first accused was in any way involved in the killing of the deceased. Although PW5 said that the deceased’s sim card was pointed out to the police by the first accused and the third accused, it was clear from the evidence of PW14 and the third accused that it was the third accused who had removed the sim card from the deceased’s mobile phone and thrown the same to the place where it was recovered from. In the circumstances I hold that the first accused’s acquisition of the deceased’s mobile phone *per se* was not sufficient evidence to connect him with the murder of the deceased.

I now turn to the third and fourth accused. The third accused said that he bought the deceased’s mobile phone from the fourth accused on 13th June 2004 at a price of Kshs.2,000/-. He further admitted that he sold the same to the first accused on 14th June 2004 at a price of Kshs.2,000/-. If that was true, the third accused made no profit at all and it would not have made any sense to sell the mobile phone. The third accused was even willing to be paid the paltry sum of Kshs.2,000/- by instalments. Why did the third accused conduct himself in such a manner if indeed he was an innocent purchaser of the mobile phone from the fourth accused? If the third accused had bought the said phone from the fourth accused innocently and for his own use he would not have sold it a day after acquiring the same. On the other hand, if his intention in purchasing the mobile phone was to sell it to a third party, he would have sold it for a profit, however small that profit could have been. That is basic principle of commerce. But the most incriminating evidence against the third accused was his own admission that he was the one who removed the sim card that was in the deceased’s mobile phone, P. Exhibit 9, broke it and threw it to the place where it was recovered from. He did so on the day he sold the mobile phone to the first accused that is on 14th June 2004. The sim card was retrieved near the junction of Nyahururu road and Karuga road, about one kilometre from the place where the deceased’s body was found. The third accused must have thought that it was only the sim card which could easily betray him and not the hand set itself and

that must have been the reason why he attempted to destroy it.

The third accused further said that the deceased's mobile phone was sold to him by the fourth accused but the fourth accused denied that allegation. The third accused said that he was introduced to the fourth accused by PW6 on 13th June 2004 when he was buying the mobile phone from him. However, the fourth accused said that he had known the third accused for about five years prior to the aforesaid date. He said that they used to meet in places where they were taking illicit brews. He also admitted that he knew PW6 but denied having met him any time in June 2004 in the presence of the third accused as had been alleged by PW6. He denied any knowledge of the deceased's mobile phone.

Although the third accused stated in his defence that he was introduced to the fourth accused by PW6 when he was buying the mobile phone from him, I did not believe him for the following reasons:- Firstly, the evidence of PW6 showed that the third accused and the fourth accused were not strangers to one another. Secondly, the fourth accused said that he had known the third accused for over five years. Thirdly, it is rather unusual for anyone to buy a used mobile phone from a stranger.

In my view, PW6, the third accused and the fourth accused knew one another fairly well. They all hailed from the same area and were dealing in quarry stones in one way or another. PW6 was a stone dresser, the third accused was a quarry worker cum lorry driver and the fourth accused was a mason. They used to frequent the same "changaa" and "busaa" drinking places. Immediately after the third accused was arrested, he told the police that the deceased's mobile phone that he had sold to the first accused had been sold to him by the fourth accused. Whether that was true or not, he implicated the fourth accused immediately after his arrest. He had no reason to do so if there was no likelihood of truth in it. PW6 corroborated the evidence of the third accused in so far as his acquisition of the mobile phone from the fourth accused was concerned. PW6 testified that the fourth accused told him that he had sold a mobile phone to the third accused. However, I have already expressed my doubts as to whether the third accused actually purchased the mobile phone from the fourth accused on 13th June 2004 at Kshs.2,000/- and sold it the following day for the same amount of money as he had purchased it at.

The demeanour of the third and fourth accused in court showed that they were not speaking the truth and it was difficult to believe them entirely. The fourth accused's defence was very contradictory. It is likely that the third accused got the mobile phone from the fourth accused and sold it to the first accused for Kshs.2,000/- then shared the sale proceeds with the fourth accused. Whether that was so or not the important point is that the third and fourth accused were in possession of the deceased's mobile phone just a day after the deceased was killed. Neither of them advanced any reasonable explanation for their possession of the phone. I agree with Mr. Gumo that the doctrine of recent possession is rightly applicable in this matter. In ***SAMUEL GICHURU MATU VS REPUBLIC***, Criminal Appeal No. 88 of 2000 at Nairobi (unreported), it was held that the doctrine of recent possession can be relied upon as the only basis of a conviction on a charge carrying mandatory death sentence as in this case. In the above quoted decision the Court of Appeal cited the case of ***R VS BAKARI s/o ABDULLA (1949) 16 EACA 4*** where it was held:-

“That case often arise in which possession by an accused of property proved to have been very recently stolen has been held not only to support a presumption of burglary or of breaking and entering but of murder as well and if all circumstances of a case point to no other reasonable conclusion the presumption can extend to any charge however penal.”

I find that the possession of the deceased's mobile phone by the third and fourth accused was so recent as to lead to no other reasonable conclusion than that they were the ones who murdered the deceased or were among the people who committed the said offence then took the deceased's mobile phone. I find each one of them guilty as charged and convict each one of them accordingly. My other finding is that there is no sufficient evidence upon which the first and the second accused can be convicted of the charge of murder of the deceased and hereby acquit the two of them. They should be set at liberty unless otherwise lawfully held.

Lastly, I must commend the police for their prompt and professional investigation of this matter. The

computer generated information that was provided to the police by both Celtel Kenya Ltd. and Safaricom Ltd. regarding the deceased's mobile phone and the sim card that was fitted therein was invaluable and proves that use of modern technology by well trained police officers in their investigations can bring about astounding results. I also commend Mr. Gumo for the able manner in which he prosecuted this matter.

DATED, SIGNED and DELIVERED at Nakuru this 19th day of May, 2006.

D. MUSINGA

JUDGE

19.5.2006

Third accused; The fourth Accused sold the phone of the deceased to me.

D. MUSINGA

JUDGE

19.5.2006

Fourth accused; I have nothing to say.

D. MUSINGA

JUDGE

19.5.2006

SENTENCE: The only sentence that is prescribed by the law is **DEATH**. I sentence the third and the fourth accused to death by hanging.

D. MUSINGA

JUDGE

19.5.2006

Judgment read in open court in the presence of:- Mr. Ogonda for the first and second accused, Mr. Ngunjiri for the third accused, Mr. Ogonda holding brief for Mr. Ateya for the fourth accused, Mr. Koech for the state, accused persons present and one assessor present - George Otieno Omondi.

D. MUSINGA

JUDGE

19.5.2006