

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Criminal Case 50 of 2004

REPUBLIC.....PROSECUTOR

VERSUS

FRANCIS MBUGUA WAWERU)

STONEFACE KAMAU MWANGI).....ACCUSED

RULING

The accused were charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the charge state that on the night of 14th/15th February 2004 at Muthurwa Railway Estate within Nairobi Area they jointly murdered **ORACHA**.

The prosecution case is that the deceased was a street boy popularly known as “Chokora”. On the 14th February 2004 at about 3.15 p.m. two chokora accompanied by 3 smartly dressed men approached the deceased and accused him of having stolen their drugs and threatened him with dire consequences. The following day the deceased was found dead. The matter was reported to the police who came and removed the body from the scene. Later the accused who are also chokoras were arrested and charged with this offence.

The prosecution called 3 witnesses and closed their case. PW1 JOHNSON is a relative of the deceased who identified the body of the deceased to the doctor who performed the post mortem PW2 CPL HALKANO is the police officer who received the murder report while on duty and he visited the scene and removed the body of the deceased to city mortuary. PW3 DR. JANE WASIKE is the doctor who performed the post mortem on the body of the deceased and who formed opinion that the cause of death was due to head injury due to blunt trauma.

On 3rd March 2005 when the case came up for further hearing, Mr. Bifuoli, the learned state counsel informed the court that on the material witnesses were street boys “chokora” who cannot be traced and he was therefore forced to close his case after he had been granted several adjournments. At the close of the prosecution case Mr. Muriuki counsel for the accused submitted that there was no evidence at all connecting the accused to the murder of the deceased and asked the court to discharge them.

I agree with the defence counsel that the prosecution having failed to trace the most material witnesses the evidence on record is not sufficient to warrant a conviction. I therefore make a finding of not guilty against each of the accused persons and acquit them.

Dated and delivered at Nairobi this 9th day of March 2005.

J.L.A. OSIEMO

JUDGE