



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KISII**  
**CRIMINAL CASE NO.16 OF 2003**

**REPUBLIC ..... PROSECUTOR**

***VERSUS***

**SIMION NYAKERARIO MARWA )  
JACKSON CHACHA MAKENGE ) ..... ACCUSED  
TOGO MAROA ONGOSO )**

**RULING**

The accused persons were arraigned in court on 15th May 2003 charged with the offence of murder c/s.203 as read with S.204 of the Penal Code. Particulars were that on 18th May 2002 at Nyamachanga trading centre of Kuria District they jointly murdered SATORA BWIRO. They appeared before JUSTICE WAMBILYANGAH (as then was) and pleaded not guilty. Hearing started before the same judge on 9th July 2003, two witnesses were heard and case adjourned to 12th August 2003 when two other witnesses were heard. After that case was adjourned to 16th October 2003. By then however the Judge had retired from the judiciary. Later I directed the case to start a fresh.

Mr. Bosire has urged the court to declare the trial before justice Wambilyangah a mistrial. Mr. Chirchir the learned State Counsel concurred, and rightly so.

As I have stated four witnesses had given evidence by the time Justice Wambilyangah left service. He cannot be recalled to finalise the hearing of the case. The trial before him is therefore a mistrial, even if this court had directed hearing to start a fresh.

I therefore declare that trial a mistrial and discharge all the accused person.

The Attorney General is however at liberty to bring fresh charges against the accused person if he so wishes.

Dated this 25th April 2005.

**KABURU BAUNI**

**JUDGE**

cc. Mobisa

Mr. Marwa for Accused

Mr. Bosire for 2nd Accused.

Mr. Kemo for state.