



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Criminal Case 58 of 2003**

REPUBLIC.....PROSECUTOR

VERSUS

DANIEL TIMAYO MUMEITA.....1ST ACCUSED

DAVID WANJALA KIBUI.....2ND ACCUSED

CHRISTOPHER ASWI KHALOKHOM.....3RD ACCUSED

ZAKARIA KIMANI NGUGI.....4TH ACCUSED

RULING

From the evidence on record, it is apparent that the police never availed any eye-witness to confirm the people who had attacked the deceased. The key witness of the prosecution was the PW1 **Thomas Baraza** who was also **not** present at the scene. On going to the scene, he took the Accused 3 to the hospital and also the deceased.

Both the **PW3** and **PW4** were police officers who also admitted that they were not present at the scene. Unfortunately, both of them never recorded any dying declaration from the deceased implicating the Accused. The Court has **not** been told whether that

was because the deceased could not talk or whether it was because the police officers never addressed their minds to that particular aspect.

Besides the above, Section 203 of the Penal Code states as follows:

“Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder.”

From the above, it is clear that there are two ingredients that have to be proved. These are the:

-Actus Rea

-Mens Rea

Unfortunately, the evidence on record does not prove the required ingredients at all. Admittedly, the prosecution has been hoping that the defence will fill in the gaps in their case. Obviously, the defence is not obliged to do so. Having stated the above, in the event that the Accused opt to keep quiet, then no properly constituted tribunal directing its mind judiciously can convict any of the Accused for the offence of murder. It is apparent that the investigations were inadequate and shallow. The same raise suspicions

on the Accused – but cannot provide any basis for any conviction.

In view of the above, I hereby find that the prosecution has failed to establish a prima facie case against all the Accused persons. All the Accused have no case to answer and are hereby “acquitted” under Section 210 of the C.P.C.

Accused should be released forthwith unless held lawfully.

Those are the Orders of the Court.

MUGA APONDI

JUDGE

29TH JULY, 2005

Ruling read in the presence of the Accused and Mr. Koech, Senior State Counsel and Ms Shilaho.

MUGA APONDI

JUDGE

28TH JULY, 2005