



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**CRIMINAL CASE NO.3 OF 2002**

**STATE ..... PROSECUTOR**

**VERSUS**

**1. CHACHA WAMBURA MATIKO )**

**2. GIRIBE RAWE CHACHA ) ..... ACCUSED.**

**3. PAUL MANGA MATIKO )**

**RULING**

The three accused person first appeared in court on 4/3/02 when they denied the charge of Murder before Hon. I. C. C. Wambilyangah. The hearing started on 17th July 2002 before Hon. P. K. K. A. Birech then a Commissioner of Assize. Prosecution closed its case on 13.2.03 after 5 witnesses had testified. Case was fixed for submissions on 7.4.03. Submissions were eventually made on 5.9.03 and a ruling was made that accused had a case to answer. They gave their defence and the defence closed its case. Case was fixed for summing up on 16.10.03. By then however the Honourable Commissioner had left service. Counsel for the accused submitted that the trial before the Hon. Commissioner was a mistrial as he is no longer in service to finalise the case.

The Honourable State Counsel supported the application and rightly so. The trial had almost come to an end when the commissioner left service. He cannot finalise the case.

In the circumstances I declare the trial before the Commissioner of Assize a mistrial and all the accused person are hereby discharged. The state is however at liberty to take any appropriate steps it deems fit. It is so ordered.

**KABURU BAUNI**

**JUDGE**

**3/6/04**

**Mr. Chirchir for state.**

**Mr. Kaburi for Lebu for Accused.**

**KABURU BAUNI**

**JUDGE.**

