

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII
CRIMINAL CASE NO.22 OF 2002

STATE PROSECUTOR

VERSUS

1. DAVID ANUNDA MOMANYI)
2. JOB NYAKUNDI MOMANYI) ACCUSED.
3. PETER ONCHWERI MOMANYI)

RULING

The accused were arraigned in court on 9th May 2002 facing the charge of Murder. They pleaded not guilty before Justice Wambilyangah. Hearing started on 12/2/03 before the same judge. By 16th September 2003. Seven witnesses had testified.

The case was adjourned for the State counsel to procure attendance of more witnesses.

However after that Justice Wambilyangah left service. Counsels for the accused have now applied for that trial to be declared a mistrial. The learned state counsel conceded.

It is clear that the trial before Justice Wambilyangah was a mistrial. He has left service and cannot therefore be able to conclude the hearing of the trial. Though this court had directed the case to start De Novo that do not change the circumstances. I therefore declare the trial before Justice Wambilyangah was a mistrial and discharge all the 3 accused person. The state however is at liberty to bring fresh charges against the accused persons if it so wishes.

It is so ordered.

KABURU BAUNI
JUDGE.

Delivered at Kisii on 4th October 2004.

KABURU BAUNI
JUDGE
4/10/2004