



**REPUBLIC OF KENYA**

**HIGH COURT OF KENYA AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL CASE 176 OF 2003**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**1. NAHASHON WANGOMBE**

**2. PAUL MUCHIRI ..... ACCUSEDs**

**JUDGEMENT**

The two Accused persons are alleged to have murdered Dickson Otieno Odhiambo on 2nd April, 2003 at Kangemi 84 within Nairobi Province. The Prosecution called six witnesses to prove the aforesaid charge. PW.6 Jane Wasike produced Post mortem report filled in and signed by Dr. Mandu who have since retired. I allowed the application of the State Counsel to permit Wasike to give evidence on and produce the said report. It cannot be disputed that the deceased died as a result of head injuries, brain haemorrhage and skull fracture. The body of the deceased was seen lying on the road by the witnesses namely Mary Wangari (PW.1) and Daniel Odhiambo (PW.2) who were residents in Kangemi area. PW.1 apart from testifying that she saw a crowd of people beating someone did not shed much light on the case. So was the case with PW.2 who saw a body lying on the road near the place where he was to attend a burial meeting.

PW.3 and PW.4 were Police officers who were directed to arrest the accused person.

PW.5 Inspector Peter Ndugi in his testimony clearly stated that after his investigations in the matter, he wrote a letter to the Attorney General giving his views that the case against the two accused persons be withdrawn due to total lack of evidence. However, The Director of Public Prosecutions directed he proceed with the case. This is the evidence before this court. One does not need any acumen to arrive at a conclusion that apart from proving the death of the deceased, the prosecution has entirely failed to adduce any evidence against any of the Accused persons. On this case, I am really perturbed to note the insistence by the Attorney General's office to continue with the case. I shall leave the same with the above comments.

The result of all the aforesaid is that I do not find any evidence against any of the two Accused persons and acquit them of the charge as leveled against them. They be released forthwith unless held otherwise as per law.

**Dated and delivered at Nairobi this 11th day of November, 2004.**

**K.H. RAWAL,**

**JUDGE.**