

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO.90 OF 2001

REPUBLICPROSECUTOR

VERSUS

SAHAL MAHAT ABDULLAHI)

ABDULLAHI HASSAN NOOR)

IBRAHIM ADEN MOHAMUD)

ABDULLAHI MOHAMUD)..... ACCUSED

RULING

The accused persons were charged with murder contrary to section 203 as read with section 204 of the Penal Code. They appeared in court on 22nd November, 2001 when the plea was taken and they pleaded not guilty. The hearing started on 11th June, 2002. The hearing was before Mutitu J. The prosecution had called 9 witnesses but before the trial was concluded the trial judge was suspended. Mr. Maino for the accused applies that the trial before Mutitu J be declared a mistrial. He cited the case of **R. VS. STANLEY NJOROGE MUNENE & 12 OTHERS CRIMINAL CASE NO.18 OF 2000** in similar circumstances which this court declared the trial before Etyang J a mistrial. In view of that decision Mr. Mungai for the state conceded.

The application is allowed and the trial before Mutitu J so far is declared a mistrial and discharge the accused persons. This is a situation for which neither side is blameable and therefore I order that the state be at liberty to present fresh charges against the accused persons if it so wishes.

Dated and delivered at Nairobi this 28th day of November, 2003.

J.L.A. OSIEMO

JUDGE

