



REPUBLIC OF KENYA



**Republic v Safari & 6 others (Criminal Case E021 of 2020)  
[2024] KEHC 236 (KLR) (19 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 236 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CRIMINAL CASE E021 OF 2020  
A. ONG'INJO, J  
JANUARY 19, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**DAVID MWATSUMA SAFARI ALIAS LABOTH ..... 1<sup>ST</sup> ACCUSED  
YUSUF SAID NDURIA ..... 2<sup>ND</sup> ACCUSED  
DIWANI KAHINDI NYALE ..... 3<sup>RD</sup> ACCUSED  
NGOMBO KARISA NYALE ..... 4<sup>TH</sup> ACCUSED  
SALIMU KALU KAHINDI ALIAS SALLOW ..... 5<sup>TH</sup> ACCUSED  
JUMA KAHINDI NYALE ALIAS JAY ALIAS MZIMUNI ..... 6<sup>TH</sup> ACCUSED  
DZOMBO KANGA LUVANDE ..... 7<sup>TH</sup> ACCUSED**

**RULING**

1. The accused persons David Mwatsuma Safari alias Laboth, Yusuf Said Nduria, Diwani Kahindi Nyale, Ngombo Karisa Nyale, Salimu Kalu Kahindi alias Sallow, Juma Kahindi Nyale alias Jay alias Mzimuni, and Dzombo Kanga Luvande face a charge of murder contrary to Section 203 as read together with Section 204 of the *Penal Code* Cap 63 Laws of Kenya.
2. Particulars of the offence are that David Mwatsuma Safari alias Laboth, Yusuf Said Nduria, Diwani Kahindi Nyale, Ngombo Karisa Nyale, Salimu Kalu Kahindi Alias Sallow, Juma Kahindi Nyale alias Jay alias Mzimuni, and Dzombo Kanga Luvande on the 13<sup>th</sup> day of December 2020 at Junda Location, Kisauni Sub-County within Mombasa County jointly with others not before court murdered David Wabuka Otua.



3. The prosecution called 5 witnesses to support its case. From the evidence of the PW1 who was also allegedly attacked by the gang of young men that randomly attacked members of the public in the area on the material night, the people he identified as having pelted him with stones on the face and stole his TV and woofer were not in court. He says they were at large and he normally sees them in the village.
4. PW2, PC Martin Wambugu Kariuki testified that on 13.12.2020 at 10.00 pm, that there were young men who had attacked people in Kasarani Ndogo and he proceeded to the scene in the company of the police when one Muturi, a landlord, led them to his plot and they found the door to the plot had been broken and a door to one of the room had also been broken. They met three of the deceased person's brothers who told them that their brother had been killed by a gang of young men. He said that the duty officer Inspector Kadir, Inspector Kinyua and Inspector Tuwei had arrived at the scene earlier and pursued gangsters who were pelting them with stones. The three officers who arrived at the scene earlier and confronted the gangsters did not come to testify and say whether they were able to identify the suspects.
5. The accused persons were arrested when PW4, Hassan Charo Bisaro, the Assistant Chief of Mikireani Sub-Location in Kaloleni Sub-County learnt of suspicious people in his area and he was informed that they were seeking the assistance of a magician/witchdoctor to cleanse them after committing murder in Junda. Although Identification parade was done, the identifying witnesses and identification parade officer did not testify or produce the ID Parade form.
6. In the absence of direct evidence that the accused persons were involved in the murder of the deceased, suspicion that they committed the murder however strong cannot be relied on to find a conviction. The investigating officer was given a lot of indulgence by the court to call the witnesses who saw the accused person commit the murder and even the police officers who responded to the scene as well as the Identification Parade Officer but he failed to do so.
7. This court therefore finds that the prosecution failed to avail relevant witnesses who could have made this court to call upon the accused persons to respond to the allegation of murder. The accused persons are therefore found to have no case to answer and are acquitted under Section 210 of the [Criminal Procedure Code](#).

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,  
THIS 19<sup>TH</sup> DAY OF JANUARY 2024**

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

In the presence of: -

Ogwel - Court Assistant

Mr. Ngiri for the State

Mr. Mwaboza Advocate for the Accused Persons

1<sup>st</sup> Accused present in person

2<sup>nd</sup> Accused present in person

3<sup>rd</sup> Accused present in person

4<sup>th</sup> Accused present in person

5<sup>th</sup> Accused present in person



6<sup>th</sup> Accused present in person

7<sup>th</sup> Accused present in person

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

**Mr. Ngiri:** I pray for a copy of the ruling.

**Order:** Copies of ruling to be supplied to the state and to defence. Sureties to accused persons are hereby discharged.

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

**19.1.2024**

