



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO. 16 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

AB.....ACCUSED

JUDGMENT

The Charge

On the night of 14th October, 2012 a dormitory at [particulars withheld] High School in Nairobi went up in flames. The fire left in its wake four students and their Janitor dead and reduced everything to ashes sending shock waves across the country.

1. After due investigation, AB then a 17 year old form three student at the school was arrested and charged with four counts of murder contrary to section 203 as read with section 204 of the Penal code. The particulars of the offence were that on the night of 14th October, 2012 at about 11pm while at [particulars withheld] High School in Dagoretti Division within Nairobi County, jointly with others not before court murdered (1) SOO, (2) MNM, (3) JKM and (4) DOO. He pleaded not guilty and the case went to full trial.

The Prosecution Case

2. The prosecution case was canvassed through the evidence of 13 witnesses. Its case was that the Accused bundled together some mattresses and clothing in the middle of the boys dormitory, poured some inflammable material on the heap and struck a match stick to light the fire. That the students woke up and in a stampede managed to escape through the windows, but unfortunately the school janitor, one boy with disability, and three other boys succumbed to burns and smoke inhalation.

The Defence Case

3. The court found a *prima facie* case against the Accused. Put on his defence he gave a sworn statement and called his mother JK (DW2) as a witness. He denied that he set the dormitory on fire stating that he was as shocked as the other students. He further testified that the two boys FM (PW2) and IK (PW4) who testified that they saw him light a match lied to the court because they could not have seen and identified him in the dark. DW2 on the other hand testified that the accused went home with two of his student friends when they escaped the fire.

The law

Murder is defined under **Section 203 of the Penal Code** as follows:-

“203. Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder.”

4. The burden of proof lies on the prosecution to show by evidence that it is the accused who killed the deceased person. By dint of **section 206 of the Penal Code**, the prosecution must also show by evidence that at the time of killing the deceased the accused had formed the necessary intention to either cause death or grievous harm to the deceased. The intention to cause death or grievous harm constitutes malice aforethought. See **R. Vs Philemon Chemas [2014] eKLR**.

Death and cause of death

5. There was evidence that a fire broke out at [particulars withheld] High School on the night of 14th October 2012. FM (PW2) IK (PW4)

both students at the school and the school manager Stephen Gatimu (PW5) witnessed the fire. Police officer No. 40479 Cpl Bernard Wathome (PW6) then duty officer at Riruta Police Station responded to the incident and together with PC Too, rushed to the school and found the boys' dormitory burning.

6. Cpl Wathome and PC Stephen Oluoch Odhiambo too found the body of the Janitor in his cubicle in the dormitory. He had been burnt beyond recognition. They rescued 6 boys who were rushed to Melchizedeck hospital. Three of the students were pronounced dead while two were referred to Kenyatta National Hospital and one succumbed while undergoing treatment.

7. Two pathologists conducted the post mortem examination on the deceased. Dr. Johansen Oduor (PW8) performed post mortem on the body of Stephen Olouch Odhiambo who was the school Janitor. The body was identified by his wife Jacinta Achieng and Wycliffe Ochieng Odhiambo. The deceased had a mixed degree of burns all over the body and internally he had soot in the trachea (airway) and red discoloration. Dr. Oduor concluded that the cause of death was burns. He produced the post-mortem report as prosecution exhibit No.2.

8. Dr. Dorothy Njeru (PW 12) performed the autopsy on bodies of (1) DOO, (2) JKM and (3) MNM. DOO was a form two student. His body was identified by his father WOO. Dr. Njeru found soot deposition in his airway, burns in the trachea and reddening and swelling of the bronchi. She formed the opinion that the cause of death was about 10% inhalation burns.

9. With respect to JKM a form four student, he had burns on the face, neck and upper limbs amounting to 15% total burnt surface area. Internally he had soot in his airway, reddening and swelling of the lining of the airway. Dr. Njeru formed the opinion that the cause of death was burns amounting to 25% including inhalation burns.

10. MNM, a form one student was identified by his uncle SWK. MNM had burns on his face, neck and both hands amounting to 20% burnt surface. Internally he had soot in his trachea and reddening and swelling of the lining of the airways. Dr. Njeru formed the opinion that the cause of death was burns amounting to 30% including inhalation burns. Dr. Njeru produced the post-mortem reports as Prosecution exhibits 8, 9 and 10 respectively.

11. It is therefore apparent that the four persons died on the 14th October, 2012 and that the cause of their deaths were burns and inhalation burns occasioned by the fire which engulfed the boys dormitory at [particulars withheld] Secondary school. Their deaths were not natural and were therefore unlawful acts having been occasioned by the unlawful acts of omission or commission by other persons.

12. I observe that the evidence presented in court shows that KM a form one student also died in the inferno. Indeed the school published a condolence message annexed to Exhibit 1A being photographs of all 5 deceased. It is not clear therefore why the prosecution preferred only four counts of murder instead of five counts.

Analysis of the evidence on the cause of the fire

13. The question whether the accused was culpable is intricately intertwined with evidence on the cause of the fire. The prosecution maintained the theory that the fire was caused by the Accused who lit a match and set flammable material on fire which quickly spread in the dormitory.

14. FM testified as PW2. He was a form three student at the school. He knew AB as they were classmates. PW2 joined [particulars withheld] High School in 2011 and had known AB since then. FM related the events of the material day as follows. He went to the dorm after preps at about 8:30pm. He organized himself for the following day. He said that he heard the breaking of window panes and the girls screaming. He climbed down from his top decker bed, put on his clothes and went to the middle of the dorm. There he saw somebody lighting a matchstick. He said that he roughly saw the face of the person although he could not clearly make out who he was. He also saw some clothes heaped on the floor and the person ignited them.

15. FM testified that somebody suddenly switched on the lights and he (FM) saw AB as the person who was lighting the matchstick and at that moment he realized that the dorm was going to be burnt. FM said that he saw AB in front of the clothes that had caught fire. He said that he was wearing a red hooded jumper and the hood covered his head but not the face.

16. FM further testified that there was a stampede as students tried to exit the dormitory. He got out then remembered a boy called JN who was unwell. He tried to go back to rescue him but by then the fire and smoke was overwhelming. He later learnt that some of the students namely DOO, KM and JN who had been rushed to Melchizedeck hospital had succumbed along with the janitor Stephen Oluoch.

17. The second witness who implicated the Accused was IK (PW4). IK was a form four student at the school. IK's testimony was that lights were switched off around 10:00pm. That as he prepared to sleep he heard noises and a smash on window panes. As he got up from his bed he heard the stamping of feet by some students. He said that AB ignited a matchstick. He saw a heap of clothes. IK further testified that everyone scampered to safety through the windows as the door was locked. He said that the fire engulfed the whole dormitory and it was later that he learned that MNM, DOO, JKM and KM had died. Finally, IK stated that he gave the police AB's name when he recorded his statement a week after the incident.

18. In cross-examination, IK stated that it had earlier, prior to lights out, appeared to him that the form threes were preparing to do something and he felt that something was not right. He said that one BO informed him that there was going to be a fire in the dorm but he had no opportunity to inform the caretaker or principal. He described that AB's was wearing a hooded red jumper.

19. IK further said in cross examination that the lights were switched on after the commotion began and before the fire was lit and that nobody stopped AB's from lighting the matchstick. He however admitted that he did not see any liquid.

20. The school manager Stephen Njoroge Gatimu (PW5) testified that he lived within the school. His duties were administration and general running of the school. PW5 told the court that on the evening of 14th October, 2012 he was with Mr. Benedict Mutuku who was the teacher on duty. He left the principal's office at around 9:30pm. He received a call from the school watchman one Ken Sudi who informed him that the boys' dormitory was on fire.

21. PW5 stated that he proceeded to the dorm and mobilized the students to put out the fire and rescue those who were trapped inside the dorm. He organized for the first 3 boys FM, ES, BM and 2 girls to be taken to Kenyatta National Hospital and the second group of four boys namely MJM, KM, JKM and DOO to be taken to Melchizedick hospital. PW5 stated that the four boys passed on and that the dormitory was completely burnt.

22. PW5 further testified that he took a roll call of the students after the incident and that AB, FM and MK were missing. However, FM and MK were accounted for as they were in hospital; while SN's parents later called to say that SN and AB were at their house.

23. The prosecution called Eddy Murunga Lukare (PW10). He was the chief fire officer in Nairobi County whose duties included carrying out fire investigations, fire prevention, training and advising contractors. PW10 testified that he visited [particulars withheld] Secondary School to carry out investigations and ascertain the origin and probable cause of the fire. He stated that he surveyed the scene and interviewed the school manager (PW5). He also found a radio set in the janitor's cubicle which was placed on top of a metallic box which was on a chair stand.

24. According to PW10, it appeared that the radio had been left on when the caretaker fell asleep and so it must have consumed the oxygen causing the death of the caretaker as the room was poorly ventilated. PW10 said that the radio may have conducted heat and caused any combustible material in the cubicle to burn and that as a result of the combustion the clothes hanging on a nail on the wall caught fire and the sparks then ignited the dormitory. He explained that when metal is subjected to heat, every combustible material evaporates and the ensuing fire would be so severe that nothing could be salvaged.

25. PW10 was categorical that the fire did not start in the middle of the dormitory but in the caretaker's cubicle. He was also categorical that there was no accelerant like diesel or petrol. His conclusion was that due to lack of ventilation in the janitor's cubicle the radio set generated too much heat, causing the equipment to overheat and become a potential source of ignition. He produced his report [Exhibit 6].

26. Engineer Joseph Kabeli Kariuki an electrical engineer from public works testified as PW11. His remit was to find out whether the electrical installation was the cause of fire. He carried out his investigations on 15th October, 2012 in the company of the chief fire officer Eddy Murunga (PW10). Engineer Kariuki stated that he did a physical check of the dormitory and the main switch cubicle. He also conducted verbal interviews with witnesses including the manager of the school (PW 5). PW11 said that he did not find any evidence that the electrical installation was the cause of the fire. He stated that electrical fires were caused by short circuit or overload within the installation.

27. PW11 explained further that **“Electrical fires are caused by electrical overloads, short circuit and earth faults which cause overheating of the associated cables, switchgear apparatus and appliances. This heat can ignite any inflammable material in contact with the same in the vicinity.”** He concluded that **“the installation had complied with the institute of Electrical Engineers regulations and he did not find any evidence that the installation was the cause of fire.”**

28. PW11 further testified that the only appliance in the dormitory was the radio set in the caretaker's cubicle. He ruled out any electrical faults associated with the radio at the socket. When referred to PW10's conclusions in the fire report made by PW10 [Exhibit 6], Engineer Kariuki stated that there could be many possible causes of the fire and that he could not attribute the cause of fire to an electrical fault. He also stated that he could not state whether there was diesel or petrol as he did not smell the same. He clarified that there was no concrete evidence that the fire was started by an electric fault.

29. The prosecution also called Government analyst Lenny Papa who testified as PW9. She stated that she received samples from Sergeant Silas Mbai on 14th November, 2012. They were: sheets of partly burnt papers A(i); burnt wood like charcoal A(ii); partially burnt towel material, A(iii); clothing & some papers mixed A(iv); and, ash A(v). Her task was to ascertain whether there was an accelerant in the exhibits. PW9 stated that diesel an inflammable item was detected in exhibits A(ii) that is a piece of burnt wood, and; in exhibit A(v), that is ash.

Expert evidence

30. **Section 77 of the Evidence Act** allows the court to admit into evidence a report by a government analyst, medical practitioner, ballistics expert, document examiner or a geologist as evidence as long as the authenticity of the documents is not disputed. See **Joseph Kakei Kaswili -vs- Republic Criminal Appeal No. 102 of 2015 [2017] eKLR**.

31. In explaining the significance of expert evidence, the Court of Appeal in **Mutonyi versus Republic (1982) KLR 203 at 210**, as per Potter JA, had this to say:-

“Expert evidence is evidence given by a person skilled and experienced in some professional or special sphere of knowledge of the conclusions he has reached on the basis of his knowledge, from facts reported to him or discovered by him by tests, measurements and the like....

In Cross on Evidence 5th edition at page 446, the following passage from the judgement of President Cooper in Davie versus Edinburgh magistrates (1933) SC 34,40, as scenting the functions of expert witnesses:

“Their duty is to furnish the judge or jury with the necessary scientific criteria for testing the accuracy of their conclusions,

so as to enable the judge or jury to form their own independent judgement by the application of these criteria to the facts put in evidence...”

32. The three reports by PW9, PW10 and PW11 respectively were expert reports receivable by the court. The opinion of an expert is, unless the contrary is shown, useful in assisting the court form an opinion in a specialized area. The court is however not bound by any opinion of the expert and must consider it alongside other evidence.

33. As the court of Appeal stated in **Dhalay vs Republic [1997] KLR 514:-**

“It is now trite law that while the courts must give proper respect to the opinion of experts, such opinions are not as it were, binding on the courts and the court must accept them. Such evidence must be considered along with all other available evidence and if there is proper and cogent basis for rejecting the expert opinion a court would be perfectly entitled to do so.”

34. In this case PW10, the chief fire officer was categorical that the fire was caused by an overheated radio in the janitor’s room and that the fire was aided by lack of ventilation. I observed both the tone of the report [Exhibit 6], which was dismissive of any other possible cause of the fire, and demeanor of the witness. The witness was categorical that nothing else could have caused the fire apart from the overheated radio.

35. Whereas I would be persuaded by the evidence of the expert that the overheated radio could cause the fire, I am not persuaded by his conclusion. The conclusion that nothing else could have caused the fire defies logic especially when seen against the report by PW11 who is an electrical engineer. PW11 was more tempered in his conclusions. He said that he did not find any evidence that the electrical installation was the cause of the fire. Such a conclusion while giving a clean bill of health to the electrical installation does not completely rule out the possibility of the fire having been caused by the electrical fault or any other possible causes including arson.

36. Both PW10 and PW11 conducted their investigation after the event. It was the testimony of all the witnesses including PW10 and PW11 that the fire had razed everything. PW10 did not demonstrate in his report how by analyzing debris he could come to a firm conclusion that it was the overheated radio in the janitor’s room and nothing else that was the likely cause of the fire. I am justified, in view of the contradictory expert opinion by PW11 and in view of other evidence by PW2 and PW4 to the effect that the fire was lit by the Accused, to reject the firm conclusion drawn by PW 10. I shall therefore consider the Report alongside all available evidence on the cause of the fire.

37. The third expert report was given by the government analyst Lenny Papa who testified as PW9. As earlier stated, her finding was that there were traces of diesel detected in the burnt wood [exhibit A ii] and in the ash [exhibit v].

38. Learned defence counsel Mr. Olewe questioned the chain of custody of the exhibits analyzed by PW9. Counsel pointed out that the exhibits were collected on 15th October, 2012 and received on 14th November, 2012 at the government laboratories. He doubted the integrity of the exhibits.

39. The defence further contested that there was any accelerant in the dormitory. Mr. Olewe argued that the evidence of the school manager (PW5) and that of the fire officer (PW10) as well as that of the Accused showed that the school compound had a secure perimeter fence and that the students were searched when they came to school. He discounted the evidence that the Accused had an accelerant which he poured on the mattresses and other clothing items to torch the dormitory.

40. I have considered the Government analyst’s report. While it is true that the exhibits were not handed over to the Government analyst immediately, I find no reason, in the absence of any evidence to the contrary, that the scene of crime officers could have tampered with the exhibits by introducing an accelerant on them. Instead, I must consider the government analyst’s report [Exhibit 4] along with other available evidence.

41. The school manager (PW5) testified that the school had a perimeter fence and that the students were searched when they came to school. The fire officer (PW10) also captured in his report that the school had a perimeter wall. It was the evidence of the Accused also that there was a perimeter wall and students were searched when they entered school.

42. The fact that the school had a secure fence and that the students were searched cannot in my view rule out the possibility of some students cleverly sneaking in items that were not allowed in the school. This is because there was no evidence that the system of searching the students and controlling who comes into contact with students was full proof. There was also no proof that it was impossible for one to sneak in inflammable material with ill intention. I would therefore not rule out the presence of the accelerant in the dormitory.

43. The Fire Report (Exhibit 6) indicated that the fire started in the janitor’s cubicle and spread to the rest of the dormitory. It contradicted the testimony of PW2 and PW4 that the fire was started in the middle of the dormitory.

44. I have already set out *in extenso* the testimony of PW2 and that of PW4 Defence Counsel Mr. Olewe submitted that both PW2 and PW4 were relatives of the school proprietor and that therefore their testimony may be not true. He questioned why they were the only witnesses out of approximately 70 boys who were sleeping in the dormitory on the material night. Counsel further questioned how the two witnesses were able to see and identify the accused in the night when the lights were already switched off.

45. It is true that the prosecution presented only two students as witnesses. There was no explanation why in the face of the fact that the two witnesses were brothers and related to the director of the school, they did not present other witnesses. However, under **Section 143 of the Evidence Act**, “no particular number of witnesses shall, in the absence of any provision of law to the contrary, be required for the proof of any fact”.

46. The proper legal question is whether the two witnesses were credible witnesses and whether the accused was properly identified.

47. FM (PW2) said he heard the breaking of the window panes and the girls screaming. That at the middle of the dorm he saw somebody vaguely and when the lights were switched on he saw that the person was AB. IK (PW4) also stated that he heard noises and a smash on window panes and stamping of feet. He said that he saw B ignite a match stick. What followed was pandemonium as the students scampered for safety.

48. I have carefully examined the evidence of PW2 and PW4. I believed their testimonies that the school dormitory was set ablaze by a student or students. The breaking of windows panes and stamping of feet which they heard cannot in any way be associated with accidental fire caused by the janitor's over heated radio.

49. It appeared to me in the course of the trial that there was concerted effort to belie the possibility of there having been a plan by some students to harm the janitor and to cause destruction in the school. The school manager Stephen Njoroge (PW5) stated that they were in the principal's office with Mr. Mutuku the teacher on duty and parted at 9:30pm. Why was he not probed on what they discussed or were meeting about at that time? In his interview with the fire officer (PW10) the school manager (PW5) insisted that the relationship between the boys and the janitor was very cordial although students were against the janitor's strictness in which he restricted their movement at night and forbade them to use mobile phones in the dormitory.

50. Further, PW4 told the court that he had been told by another student one BO that there was going to be a fire in the dorm. It is not clear why BO was not a witness in the case or indeed whether or not he was interrogated on what he knew. Failure to call BO rendered this aspect of PW 4's evidence hearsay.

51. It was also telling that the school manager (PW5) told the court that a week after the fire, a prefect named MRM told him that the fire was caused by form threes. PW5 further stated that two students named EM and M gave him names of suspects which he gave to the police when the police interrogated him. PW5 did not mention the names he had passed on to the police and only stated that the investigations were then taken over by the police.

52. The prosecution did not call one MRM who had recorded a statement with the police. MRM had stated in his statement that he was the school deputy captain and that on 14th October, 2012 at around 8.00am, the school janitor one Stephen Odhiambo who was also the church patron had shown him a paper which had the writing "Kaaatarudi venyeulikuwatutakumaliza" meaning "if you do not go back where you came from, we will finish you."

53. The above statement, to the mind of the court, was critical evidence which should have provided crucial leads to the cause of the fire and the motive for such a heinous crime. It demonstrates that there were sufficient leads for the investigators to probe the school unrest and unearth the arsonists. One wonders why there were such serious omissions both at the investigation and prosecution level.

Identification of the Accused

54. The crux of this case however is whether the accused was properly identified. I have already stated that I believed the evidence of PW2 and PW4 that the dormitory was set ablaze. As earlier stated, I disbelieved the fire officer's assertion that the fire was caused by an overheated appliance in the janitor's cubicle. PW2 and PW4 told the court that they saw AB striking a match and that he was dressed in a red hooded jumper.

55. It is trite that where identification of the Accused is based on visual identification, it is paramount that the court warns itself on the dangers of relying on such identification. This caution was succinctly stated by the Court of Appeal in **Cleophas Otieno Wamunga vs Republic Court of Appeal Criminal Appeal No. 20 of 1989 KLR 424**, where it held that:-

"Evidence of visual identification in criminal cases can bring about miscarriage of justice and it is of vital importance that such evidence is examined carefully to minimize this danger. Whenever the case against a defendant depends wholly or to a great extent on the correctness of one or more identifications of the accused which he alleges to be mistaken, the court must warn itself of the special need for caution before convicting the defendant in reliance on the correctness of the identification".

56. In the present case, the incident happened when the dormitory lights had already been switched off. It was FM (PW2) evidence that when he heard the breaking of window panes and girls screaming he got out of his bed put on his clothes and went to the middle of the dorm where he saw somebody lighting a matchstick. He could not clearly make out who the person was but suddenly, someone switched on the light and he saw that the person who was lighting a match was B.

57. IK (PW4) on the other hand said that he saw AB igniting the fire with a matchstick and that he saw a heap of clothes. IK however said in cross-examination that he did not recognize the other three boys as it was dark at the time but that he knew that they were form threes because the form threes usually occupied that side of the dorm. He also said that AB wore a red hooded jumper.

58. It is true that both PW2 and PW4 knew AB as they were schoolmates. Theirs would therefore be a case of recognition. Indeed they may have recognized him. The conditions under which they recognized him however were not favourable at all. The dormitory lights had been switched off and it was dark. Then the lights were suddenly switched on again, and at that time the dorm was catching fire and there was immediate pandemonium. In that moment of immediate danger, the witnesses could not have had time to affirm the identity of the student who lit the match.

59. My careful analysis of the testimonies of PW2 and PW4 draws me to the conclusion that they may have recognized AB as the arsonist. Indeed their evidence raises deep suspicion in the mind of the court that the Accused was seen and recognized striking the fatal match at the

scene. He was not a stranger to the witnesses as he was their schoolmate. According to PW5, he was also not present when the roll call was taken after the fire as he had already left the school compound. The law however is that suspicion however strong cannot found a conviction. In **Sawe v Republic, 2003 KLR364**, the court of appeal settled this legal principle in the following terms:-

“The prosecution must prove the case against the accused beyond reasonable doubt.....suspicion however strong, cannot provide a basis for inferring guilt which must be proved by evidence.”

60. It is my finding therefore, and guided by the above, that the identification of the Accused leaves room for doubt. The law demands that I grant the Accused the benefit of that doubt.

School safety

61. Before concluding this judgment, I must make certain observations with respect to school safety. This case brings into sharp focus the safety of students in boarding schools in our country. It demonstrates that safety standards are honoured more in breach than in observance.

62. The legal framework for school safety is found in the **Basic Education Act No. 14 of 2013**, and the **Ministry of Education Safety Standards Manual For Schools in Kenya 2008**, which require that schools should be safe for use by all students, teachers and non-teaching staff. The Manual 'sets out the Standards and Guidelines that a school should put in place to enhance Child Safety.'

63. Chapter 6.2 of the Manual sets out extensive guidelines. Of relevance to this case is Chapter 6.2 which provides for safety of physical structures including the dormitories. It provides that schools should observe the following minimum standards in dormitories:-

- The space between the beds should be at least 1.2 metres while the corridor or pathway space should not be less than 2 metres.
- Since sharing of beds is prohibited in schools, admissions should be tied to bed capacity at all times.
- All doorways should be wide enough, at least 5 feet wide, and they should open outwards. They must not at any time be locked from outside when learners are inside.
- Each dormitory should have a door at each end and an additional emergency exit at the middle. It should be clearly labelled "Emergency Exit".
- Dormitory doors should be locked at all times when learners are in class or on the playing fields. The keys to the doors should be kept by the Dormitory Master/Mistress or the Dormitory Prefect.
- Dormitory windows must be without grills and should be easy to open outwards.
- Fire extinguishing equipment should be functioning and placed at each exit with fire alarms fitted at easily accessible points.
- Regular spot checks by the teachers and the administration should be undertaken before learners retire to bed.
- An accurate roll call should be taken every day and records well maintained.
- There should be regular patrols by the school security personnel or any other authorised security personnel. No visitor should be allowed in the dormitory.

64. The safety standards are binding on both public and private institutions and under section 82 of the Basic Education Act, an institution shall not be licensed unless the premises and accommodation conform to the prescribed requirement of the occupational health and safety regulations.

Omissions by the school

65. It was clear from the evidence in this case that the school had failed to put in place adequate safety measures to protect the students. There was evidence that the boys' dormitory was overcrowded. The scene of crime officer produced photographs of the burnt up dorm. The fire officer (PW10) also took photographs which formed part of his report. He found that the dormitory was not only congested but that there were no clear passages and exits that would aid escape in case of an emergency. Further, the firefighting equipment had not been tested or serviced for years. The school manager (PW5) also admitted that no one in the school had been sensitized on how to respond to emergencies such as fire.

66. More critically, the dormitory was locked from the outside. PW2 and PW4 and the Accused told the court that the dormitory was usually locked by the janitor. It is therefore apparent that the high number of casualties could have been avoided if there were clear passage ways; if the door was not locked and; further if the students had been sensitized on fire emergency preparedness. The dormitory as it were, was a death trap for the students and a disaster waiting to happen.

67. It is the hope of this court that the Ministry of Education will move with haste to enforce the safety standards in school dormitories to avert further senseless loss of life in schools in case of fire. It is also desirable that the school boards of management and the principals of schools be on high alert on student indiscipline likely to compromise student safety in boarding schools. In this regard, I direct the Deputy Registrar of this court to certify this judgment to the Cabinet Secretary and the Principal Secretary, Ministry of Education for their appropriate action.

68. In the final analysis, it is my finding that the fire disaster at [particulars withheld] High School which claimed the lives of four innocent students and their youthful janitor was poorly investigated and prosecuted. I find that the charge of four counts of murder against the Accused has not been proved beyond reasonable doubt.

69. Consequently, the Accused AB is acquitted under section 215 of the Criminal Procedure Code for lack of sufficient evidence.

Orders accordingly

Judgment delivered, dated, and signed at Nairobi this 12th Day of September, 2019.

.....

R. LAGAT- KORIR

JUDGE

In the presence of:-

A BA ccused

Mr.Yussuf.....Court Assistant

Mr. Okeyo.....Counsel for the State

Ms.Kilonzo h/b for Mr.Olewe.....Counsel for the Accused