



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE
CRIMINAL CASE NO 3 OF 2013
(Consolidated with Cr Nos 53 & 54 of 2012)

REPUBLICPROSECUTOR

VERSUS

1. DANIEL BARSANAMISI1ST ACCUSED
2. NICHOLAS WKANUSU.....2ND ACCUSED
3. JACK JUMA.....3RD ACCUSED
4. ABRAHAM ECHEKAN ELIM.....4TH ACCUSED
5. MARKO EYANAE EWYL.....5TH ACCUSED

RULING

The accused were charged with the offence 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 **23rd December 2012 at Kitalale village within Trans Nzoia County jointly murdered Wilson Nyongesa Wafula**.

The accused denied the offence. The prosecution called 3 witnesses.

PW1, the doctor produced the postmortem report which shows that the deceased died as a result of strangulation.

PW2 identified the deceased body during postmortem exercise. PW3 arrested the accused persons.

The prosecution after several adjournments closed its case.

The evidence on record so far does not indicate that there was an eye witness to the incident. There was no evidence to suggest any *mens rea* on the part of the accused person either jointly or severally.

As clearly submitted by the accused counsel it would be inappropriate to put them on their defence. The prosecution did not establish the charge against the accused and they are hereby set free unless lawfully held under the provisions of Section 210 of the Criminal procedure Code.

Delivered this 25th day of January 2017.

H.K. CHEMITEI

JUDGE

In the presence of:

Kakoi for state

Ingosi for 2-3 accused

Tigogo for 4-5 accused

All accused persons – present

Kirong – Court Assistant