



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**CRIMINAL CASE NO. 24 OF 2012**

**REPUBLIC .....PROSECUTION**

**VERSUS**

**DIONISIA GITONGA RUNJI & 14 OTHERS.....ACCUSED PERSONS**

**RULING**

The accused persons jointly face the charge of murder contrary to Section 203 as read with 204 of the Penal Code. A plea of not guilty was entered for each of the accused persons.

The prosecution called fourteen (14) witnesses in this case. The evidence may be briefly stated. On the 19/06/2012 the deceased who was the Assistant Chief of Machanga sub-location in Mbeere South District of Embu County left his home at around 10.00 am. to attend a meeting at Kamutuanjiru Primary School. The meeting ended at around 2.00 pm. and the people dispersed.

The deceased did not return home on the material day. The following day personal articles including a biro pen, spectacles in a yellow case, one shoe, torch, and some maize combs were found on the road near one Murage's home. A trail of blood led the area residents to the river where several body parts identified to be those of the deceased were recovered. The accused persons were subsequently arrested and charged with the offence.

There was evidence that most of the accused persons were mentioned at a chief's baraza and arrested. There was also evidence that there was a long standing dispute between the local administration and a group of people known as "Muturi" who included some of the accused persons and that they had invaded government land and settled on it. This was said to have triggered bad blood between the group and the deceased who was opposed to the group's agenda.

Evidence was also given to the effect that some of the accused persons constantly differed with the deceased who was said to be a law-abiding citizen.

From the evidence of the prosecution witnesses, it is evident that none of the witnesses except PW7 (D15) and PW8(D16) saw the accused persons inflict the injuries that caused the death on the deceased. The deceased died of several cuts which resulted into a dismembered body.

The evidence of PW7 and PW8 was that on their way home from Machanga market at around 7.00 p.m., they found the deceased on the road near one Murage's home surrounded by about 5 men whom they identified by their voices. The men who included 15<sup>th</sup> accused were armed with pangas and were accusing the deceased of denying them "permits" and constantly calling the police to harass them. The deceased pleaded with them to forgive him and spare his life. The attackers could not heed to the plea and proceeded to slash the deceased with pangas. Some of the men were to later go to the home of PW7

and PW8 where they threatened them with death in the event that they disclosed what they had seen.

The fifteen accused persons were each represented by a counsel. At the close of the prosecution's case the counsels made oral submissions to the effect that a prima facie case to justify calling the accused persons to give their defences had not been established.

I have perused and considered the evidence on record which has been summarised herein. I am of the considered opinion that there is no direct or circumstantial evidence sufficient to support the charge against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> accused persons.

As for the 15<sup>th</sup> accused person, I am satisfied that the evidence on record sufficiently supports the charge against him. I find that he has a case to answer and is hereby called upon to give his defence.

Consequently the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> accused persons are hereby acquitted under Section 210 of the Criminal Procedure Code.

It is hereby so ordered.

**DATED, DELIVERED AND SIGNED AT EMBU THIS 1ST DAY OF MARCH 2017.**

**F. MUCHEMI**

**JUDGE**

**In the presence of:-**

- |     |             |                             |                                    |                  |
|-----|-------------|-----------------------------|------------------------------------|------------------|
| 1.  | Ms.         | Nandwa                      | for                                | State            |
| 2.  | All         | accused                     | persons                            | present          |
| 3.  | Mr.         | Momanyi                     | for                                | 5th              |
| 4.  | Mr. Okwaro  | for 1st Accused             | and holding brief for Ms. Njeru    | for 2nd accused  |
| 5.  | Mr. Gacuba  | for 13th accused            | and holding brief for Mr. Mugambi  | for 3rd Accused  |
| 6.  | Mr. Ithiga  | for 4th accused             | and holding brief for Ms. Ndorongo | for 7th accused. |
| 7.  | Mr. Momanyi | holding brief for Mr. Nduku | for 6th & 11th                     | Accused          |
| 8.  | Ms. Njiru   | for Fatuma                  | for 8th                            | Accused          |
| 9.  | Mr. Momanyi | for Eddie Njiru             | for 9th                            | Accused          |
| 10. | Mr.         | Njoroje                     | for                                | 15th             |
| 11. | Mr. Njoroje | for Ken Githinji            | for                                | 10th             |
| 12. | Mr. Ithiga  | for Kathungu                | for                                | 12th             |
| 13. | Ms. Njiru   | for Kariithi                | for                                | 14th             |
|     |             |                             |                                    | Accused          |