



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT KISII**

**CRIMINAL CASE NO. 43 OF 2009**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**DANIEL GECHURU GETANDA**

**JOSEPH MWANGI MANGERA.....ACCUSED**

**FRANCIS OGANYO KARANI**

**JUDGMENT**

**Introduction**

1. The accused persons herein Daniel Gechuru Getanda, Joseph Mwangi Mangera and Francis Oganyo Karani are charged with murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the offence are that on the night of 7<sup>th</sup>/8<sup>th</sup> February 2009 at Bogitaa Sub location in Kisii South District within Nyanza Province, jointly murdered Robert Nyabaro Martin. They denied the charge and the case proceeded to hearing.

**Facts of the Case**

2. In his opening statement, counsel for the State Mr. Gitonga informed the court that on the night of 7<sup>th</sup>/8<sup>th</sup> February 2009, the three accused persons were posing as members of the community policing when they met one Rebecca Bonareri Martin who told them that her daughter Rael Biyaki Martin had been abducted by one Robert Nyabaro Martin (the deceased).

3. The three of them then proceeded to the home of the deceased, arrested him and led him to his father's (Francis Martin Ongunga) home. On the way, they assaulted the deceased with rungus and dropped him at his father's compound in an unconscious state at about midnight before all the three accused ran away from the compound.

4. The following day at about 6.00 a.m. the deceased's father discovered his son's body lying in the compound. The deceased's father reported the matter to the area Assistant Chief who further reported the matter to Gesonso police post.

5. Later, police visited the scene, removed the body and took it to Nyangena hospital mortuary. All this time, the three accused persons were nowhere to be seen. They were however later apprehended on

diverse dates. According to the State, the postmortem report showed the cause of death as cardio respiratory arrest secondary to head injury with blunt object.

6. It was the prosecution's case that by the accused assaulting the deceased with a ring, they intended to cause his death as contemplated under **Section 206** of the **Penal Code** and they therefore had the requisite malice aforethought.

### The Evidence

7. The prosecution called 9 witnesses, though PW1, Rebecca Bonareri and PW2, Martin Andrew Nyakundi both turned hostile and did not testify.

8. PW8, Rael Biyaki, a daughter to both PW1 and PW2 who was apparently at the centre of this whole saga told the court that on 7<sup>th</sup> February 2009 at about 8.00 p.m., she was coming from the home of the deceased when she met all the three accused persons herein. The third accused Francis Oganyo Karani enquired from her where she was coming from. She told them that she was coming from the home of the deceased who was her boyfriend. Upon hearing that PW8 was coming from the deceased's home, the three accused persons caned her before they disappeared. On the following day, she learnt of the death of the deceased. PW8 confirmed that when she left the deceased's home at about 8.00 p.m. on 7<sup>th</sup> February 2009, the deceased was well and in his house.

9. During cross examination, PW8 stated that she had gone to the deceased's house at about 4.00 p.m. and that they remained together in the house until about 8.00 p.m. She also confirmed that they had been all alone in the house until she left him for her home at about 8.00 p.m.

10. PW3, Everlyne Nyamisa Gechanga a sister to PW8 testified that on 7<sup>th</sup> February 2009, at about 8.00 p.m. she was in her house with PW8 and that PW8 was threatening to take poison. That PW8 wanted to take poison when PW3 asked her where she had been. The two of them quarrelled. It was at that point that PW3 sent a lady by the name Moraa to go and call her (PW3's) mother, Rebecca Bonareri, PW1. PW1 then came to PW3's house together with Moraa and when PW1 wanted to take PW8, PW8 fainted.

11. PW3 stated that after PW1 had been given the reason why PW8 wanted to take poison, PW1 went away. PW3 also went out of the house and on getting outside her house, PW3 saw the three accused persons all of whom PW3 identified during her testimony.

12. PW3 told the court that she knew all the three accused persons well and had known them for a long time. While PW3 was still out there with the three accused persons, one of her children (not called as a witness) told the three accused persons that PW8 had been seen with the deceased earlier that day.

13. It was PW3's further testimony that when the three accused persons

learnt that PW8 had been seen with the deceased (PW8 and the deceased were said to be cousins) the three accused persons told PW3 that both PW8 and the deceased had to be disciplined because the two had planned to marry each other.

14. PW3 went further to state that the three accused persons then went for the deceased. She followed them. On seeing her, at the deceased's house, the accused persons asked PW3 to return to her own home and she did so.

15. On the following morning, PW3 learnt of the death of the deceased who was aged 19 years old.

16. During cross examination, PW3 stated that the deceased and PW8 were lovers and that they had planned to marry. She also stated that she did not see the accused persons assaulting the deceased.

17. PW4, Edna Bitutu Matara testified that on 7<sup>th</sup> February 2009 at about 11.00 p.m. she was asleep in her

house when she was woken up by PW1 who wanted her to go and see for herself the deceased person being taken from his house to the chief's camp. She woke up and on going outside; she found PW1, Rebecca Bonareri, and Moraa together with all the three accused persons. All the 5 people, according to PW4 were well known to her and she saw all of them well standing outside the deceased's house. PW4 lived in a house which was in the same compound as the deceased's house. The deceased was a younger brother to PW4's husband.

18. PW4 stated that while they were all standing outside the deceased's house, PW1 asked her to call the deceased and ask him to open the door. She did so, but the deceased refused to open the door and also to answer her call. It was at that point that Gechuru, the 1<sup>st</sup> accused called the deceased, whereupon the deceased opened the door. When the deceased opened the door, the 1<sup>st</sup> accused got hold of him as he also ordered PW4 to get the padlock for the deceased's house and lock the door. PW4 did so.

19. PW4 also stated that she was ordered to go back to her house to sleep, by the accused persons who were being led by the 1<sup>st</sup> accused Gechuru, but before she did so, she was ordered to go and inform her parents in-law that the deceased had been arrested by community police members and had been taken to the chief's camp. PW4 stated that she had known all the three accused persons to be members of community policing for a long time. As she left for her parents in-laws' house, she left the deceased still in the company of the three accused persons, PW1 and Moraa (the latter was not called as a witness). PW4 stated that she did not know why the deceased was being arrested by the community police.

20. On the following morning, PW4 got up and went to the house of her parents' in-law and there she found the deceased lying down on the floor with injuries all over his body. The deceased was also bleeding. When she called the deceased, the deceased did not respond. Her parents' in-law were in the house. PW4 then went outside and no sooner had she gone out than she heard screams from inside her parents in-laws' house.

21. During the ensuing cross examination, PW4 stated that she did not see the people who assaulted the deceased and that she did not accompany the deceased to the chief's camp when he was taken there by the accused persons and PW1. PW4 could also not say how the deceased ended up lying on the floor of his father's house.

22. Francis Martin Ogongo, the father to the deceased testified as PW5. He testified that on 7<sup>th</sup> February 2009 at about 11.00 p.m. while he was asleep in his house, together with his wife Prisca Kemunto, PW6, he was woken up by Gechuru, the 1<sup>st</sup> accused herein and asked to open the door. On opening the door, he saw all the three accused persons standing outside his house. The three accused persons then informed him that the deceased had committed an offence by having a love affair with PW8. On enquiring where the deceased was, the accused persons told PW5 that the deceased was right there with them. On seeing and touching the deceased, PW5 knew that he was dead because he was cold and he could not talk.

23. PW5 further stated that the 3<sup>rd</sup> accused, Francis Oganyo Karani told him (PW5) that the deceased had been found with PW8. PW5 asked them why they had taken the deceased to the chief's office instead of allowing him to deal with the deceased, but the accused persons did not answer him. Instead, all the three accused persons ran away.

24. Thereafter, PW5 went to report the incident to the chief. The chief came to the home and saw for himself the state in which the deceased was. (The chief was not called as a witness). According to PW5, the deceased had some injuries on the head, and his genitals had also been chopped off. PW5's allegation that the deceased's genitals had been chopped off was not supported by the postmortem report.

25. During cross examination, PW5 conceded that he did not see the people who killed the deceased, but said that it was the three accused persons who carried the body of the deceased to his (PW5's) home. He also stated that after the deceased's body was dumped outside the house, he (PW5) together with his other sons carried the body into the house. PW5 also testified that he was not aware of the alleged love relationship between the deceased and PW8, Rael Biyaki. He also denied any knowledge of the deceased

having been found with any person.

26. PW6, Prisca Kemunto corroborated the testimony given by PW5. She identified all the three accused persons and told the court that they were vigilantes in the village. She also stated that on the night of 7<sup>th</sup> February 2009, at about 11.00 p.m., PW1 called her and informed her that they had killed her son and had now brought him to them. On going outside, she saw the three accused persons standing outside with the deceased lying on the ground. When she asked the accused persons what had happened to the deceased, the accused persons ran away. The deceased who could not talk was then carried into the house by PW5 with the help of other people. She stated that she did not see the accused persons assaulting the deceased.

27. During cross examination, PW6 stated that she did not see the people who took away the deceased to the chief's camp but she saw the accused persons who brought the body of the deceased to the home. She denied that the deceased was found with any poison but she could not say who killed him.

28. Number 75362 Police Constable Charles Namisi, the Investigating Officer testified as PW7. He testified that on 8<sup>th</sup> February 2009, at around 9.00 a.m., he was on duty at Gesonso police station when he received a call from the Assistant Chief of Bogitaa sub location, one Edward Mwenda informing him that a murder had been committed within the sub location during the previous night.

29. PW7 immediately informed the OCS Inspector of Police Jeremiah Mateche and together they went to the scene of crime. PW7 interviewed PW1 who told him that her daughter, PW8, had been abducted by the deceased and that she had in turn made a report to the vigilante group and sought their help. That the three accused persons had accompanied PW1 to the deceased's home and assaulted him until he was unconscious. The three accused persons had then taken the deceased to his father's house before they ran away.

30. PW7 and his OCS removed the deceased's body to the Nyangena Private Hospital Mortuary. A post mortem examination was conducted on 12<sup>th</sup> February 2009 by Dr. David Momanyi and thereafter the body was released to the family for burial. PW7 also recorded statements from witnesses. The three accused persons were later arrested by other community police on different dates and taken to Gesonso police station and were subsequently charged with the murder of the deceased.

31. PW7 stated that the deceased's body had visible injuries on the head and the abdomen. According to PW7 the 1<sup>st</sup> accused was arrested by APC Sgt Jeremiah Nyakundi, while the 3<sup>rd</sup> accused was arrested by community policing chairman, within Bomwanda sub location. PW7 rearrested the 3<sup>rd</sup> accused.

32. Dr. Asaava Peter of Kisii Level 5 Hospital testified as PW9. PW9 produced the postmortem report which was prepared, filled and signed by Dr. David Momanyi. According to Dr. Asaava, the deceased's body had multiple bruises on the face, the lower limbs, the upper limbs and on the anterior chest walls as well as on the abdomen. There was bleeding in the small intestines which could have been due to infection or trauma. Dr. Asaava also said that according to the postmortem report, there was blood under the scalp on the head which could have been due to blunt force trauma. He also said all other systems of the deceased's body were normal.

33. The conclusion made by Dr. Momanyi was that the cause of death was cardiorespiratory arrest (heart attack). The postmortem report was produced as **P. Exhibit I**.

#### The Defence Case

34. All the three accused persons gave unsworn testimonies and called no witnesses. The 1<sup>st</sup> accused Daniel Gechuru Getanda denied the charges facing him and recalled that on 28<sup>th</sup> June 2009 he was in his house when he was awakened by police officers. On opening his door they shone a torch at him and told him to give them the alcohol he had in his possession. He was then hand cuffed, taken to Igonga AP Camp alongside others and in the morning he was transferred to Gesonso police station where he was kept for 3 days. He remained behind as other suspects were released and on the 4<sup>th</sup> day he was brought

before court where charges were read to him which he still denied.

35. He denied ever knowing the deceased and contended that PW3 had wanted to lease part of his shamba but because she did not offer him the prize he wanted she came to court to give false evidence against him. He also denied ever knowing both PW3 and PW8. He also said all the other evidence given against him was false.

36. The 2<sup>nd</sup> accused Joseph Mwangi Magera denied ever knowing the deceased or anything about the charges he was facing. He recalled that on 22<sup>nd</sup> July 2009 at about 3.00 p.m. he was at his place of work repairing shoes when a person came to his repair shop and alleged that some people who had been arrested by police were claiming that the shoes they had stolen had been brought to his shop for repair.

37. That he accompanied the said persons to the police station but was placed in cells as soon as the police took his details.

38. On 23<sup>rd</sup> July 2009 he was taken to Kisii police station where he remained in custody until 30<sup>th</sup> July 2009 when he was brought to court and charges were read to him. He denied those charges and still denies them.

39. He alleged that PW4, PW5 and PW6 gave false testimony against him as the witnesses had taken his wife to marry her off to their nephew and when he asked them why they in turn told him they had taken her to a place where she would live well. That when he insisted on the issue the three witnesses warned him of dire consequences if he insisted on asking for his wife. He alleged that that was the grudge that made the 3 witnesses to come to court to give false testimony against him.

40. The 3<sup>rd</sup> accused Francis Ogango Karani also denied the charges against him. He recalled that on 30<sup>th</sup> January 2010 he was arrested at a place called Bomoranda sub location while coming from court after attending a land dispute case involving himself and PW1 and PW2.

41. He also told the court that when he was at Bomwanda, a vehicle came carrying PW1 and PW2 the same people he was having a case with. He was then arrested and taken to Gesonso police station. He was later taken to Kisii police station, stayed there for 3 days before being brought to court on a Monday. He contended that the land case he had with PW1 and PW2 resulted in a grudge that led to him being framed in this case so that once he is imprisoned they can take over his land. As noted earlier, PW1 and PW2 both turned hostile and did not testify for the State.

### Final Submissions

42. Mr. Masese, counsel for the accused persons made final submission and contended that the prosecution had failed to prove its case against all the 3 accused persons beyond reasonable doubt for the following reasons:-

*1. Murder cannot be proved without proving malice aforethought which prosecution failed to prove.*

*2. The evidence on record is not enough to sustain a conviction against any of the accused persons as the prosecution witnesses did not offer the court any conclusive evidence to enable this court pass a verdict of guilty.*

He urged the court to acquit each of the 3 accused persons under the relevant provisions of the law.

443. Miss Cheruiyot, Counsel for the State chose to rely wholly on the evidence on record.

### Issues for Determination

44. The issues for determination in this case are twofold; whether the deceased was murdered and if so whether he was so murdered by the 3 accused persons. Murder is defined as the act of causing the death of another by malice aforethought through an unlawful act or omission of the person(s) who causes the death of the other person. Malice aforethought is essentially the *mens rea* in a murder case. In other words it is the intention to kill another person deliberately and by an unlawful act or omission.

45. There is no doubt in this case that the deceased's body was found lying on the ground of his father's compound (PW5) as stated by PW5 and PW6 and also by PW4 who found the body of the deceased lying inside the house of PW5 when she went to the house in the morning on 8<sup>th</sup> February 2009.

46. According to the evidence adduced by the prosecution witnesses the genesis of this whole matter began on 7<sup>th</sup> February 2009 at 4.00 p.m. when PW8 Rael Biyaki, the girlfriend to the deceased visited him in his house where she stayed until about 8.00 p.m. According to Rael's (PW8's) evidence she left the deceased in his house alone and walked back to her sister's house (PW3) which was about 60-70 metres from the deceased's house. While still on her way, she met the 3 accused persons who caned her when she told them that she was coming from the deceased's house. Her evidence is corroborated by PW3 who in her evidence in chief told the court that she had quarreled with PW8 based on the fact that she was having a love affair with her own cousin (the deceased). PW3 then called their mother, PW1, who on arrival made enquiries as to why PW8 wanted to commit suicide and PW3 explained the reason why. PW3 also revealed the fact that when the 3 accused persons heard about the relationship PW8 and the deceased had, they decided that the deceased and PW8 who were cousins had to be taken to the chief for discipline.

47. PW4 who happened to be a sister in-law to the deceased attested to the fact on the night of 7<sup>th</sup> February 2009 at around 11.00 p.m., she was woken up by PW1 who wanted her to witness the deceased being taken to the chief's camp. On going out of the house, she saw PW1 in the company of the 3 accused persons and one Moraa. She was made to call the deceased as her house and that of the deceased were in the same compound. When the deceased refused to respond, the 1<sup>st</sup> accused called him and he opened the door. Upon opening the door, the 1<sup>st</sup> accused held his (deceased's) hand, ordered PW4 to lock the deceased's house and also ordered her to tell her parents in-law (deceased's parents) that deceased had been taken to the chief's camp.

48. PW5, who was the deceased's father, recounted the events of the material night 7<sup>th</sup> February 2009 at about 11.00 p.m. and testified that he was woken up while asleep with his wife by the 3 accused persons. The 3 accused persons had been known to him before as village vigilantes. When he opened the door the three accused persons informed him that his son had committed an offence namely that he had been found together with PW8. On enquiring about his son, they told him that he was with them and when he saw him he was already dead. He knew this because when he touched him he was cold. The 3 accused persons then ran away.

49. PW6 the deceased's step mother corroborated her husband's testimony and stated that they were woken up by vigilantes who were accompanied by PW1 who told her that they had killed their son and had brought him to them.

50. PW7 the investigating officer testified that the 3 accused persons were all arrested by community police on different dates. PW9 the medical doctor testified that there was blood in the scalp of the deceased which could be due to a blunt force trauma and further that there was bleeding in the brain. He opined that the deceased's cause of death was cardio respiratory arrest (heart attack) secondary to head injury with blunt abdominal injury.

51. The accused persons in their respective defences vehemently denied the charges facing them and also denied ever knowing the deceased. The gist of accused defences was that they were nowhere near the place where the deceased might have been killed on the material night. The 1<sup>st</sup> accused merely stated he was arrested because of brewing alcohol while the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons alleged that they had a land dispute and were framed up for this charge so that PW1, PW2, PW5 and PW6 could get their land.

## Findings and Conclusions

52. From the above chronology of events, it is clear that prosecution case turns mainly on circumstantial evidence because none of the prosecution witnesses actually saw the deceased being attacked. However, there is evidence that the 3 accused persons were the last people to be seen with the deceased alive and to my mind the question is whether or not the 3 accused persons can be culpable for the death of the deceased by the above circumstantial evidence.

53. Firstly, in Jeremiah Kiiru Nyambura –vs- Republic [2011] e KLR the Court of Appeal held:-

**“In convicting the appellants the trial judge considered the circumstances under which the appellant was identified. The offence was committed at night time. However, PW2, PW3 and PW5 testified that they knew the appellant before. He was popularly known as Coco-tea. PW3 testified that he had seen him earlier the same day wearing the same clothes as those he was said to have had on at the time the deceased was fatally wounded .... considering the fact that the witnesses knew him well before, it cannot be said that their identification of him was mistaken. We remind ourselves of the caution this court sounded in Wamunga –vs- Republic [1989] KLR 424 – Kisumu Criminal Appeal NO.20 of 1984 concerning reliance on visual identification in a criminal case. The caution was that a person may be genuine in his identification of a suspect by way of recognition but be mistaken and hence the need for care before such evidence can be relied upon without other evidence to sustain a conviction. We are, however, satisfied that the visual identification was without a mistake.”**

54. In the instant case, even though it was at night none of the prosecution witnesses except PW7 and PW9 the investigating officer and the doctor respectively were unfamiliar with the 3 accused persons. The three of them were all known to the prosecution witnesses as village vigilantes. PW3, PW4, PW5 and PW6 all testified to the fact that they each saw the three accused persons from close quarters. For PW3, she stated that the three accused persons, together with PW1 went to her house. That she knew all the three accused persons before for a long time and that they talked with her that night. The three accused persons also told her that they would take PW8 and the deceased to the chief for discipline. PW4 said she was woken up by the three accused persons and ordered to go and call the deceased to come out of his house. They accompanied her to the deceased’s house. The 1<sup>st</sup> accused is the one who made the deceased to come out of the house when he called him. The 1<sup>st</sup> accused then got hold of the deceased’s hand and as they told her they were taking deceased to the chief, the accused persons ordered her to go and inform PW5 and PW6, which she did. PW4 also testified that the three accused persons made her to lock the deceased’s house before she left. Both PW5 and PW6 testified they knew the 3 accused persons as vigilantes. When they were called to open the door, they went out and saw the three accused persons standing near the body of the deceased. From all the above evidence, I am satisfied that there was no mistaken identity of any of the accused persons because all these three accused persons were well known to all the witnesses and although it was night, none of the witnesses expressed any doubt that they knew and saw the accused persons that night.

55. Secondly, in Wambua & 3 others –vs- Republic [2008] KLR 142, the Court of Appeal sitting at Mombasa reiterated the governing principle of inferring guilt in a case of circumstantial evidence when it rendered itself thus:-

**“In order to justify an inference of guilt from circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of guilt. The burden of proving facts which justify the drawing of this inference is always on the prosecution which is required to establish its case beyond any reasonable doubt.”**

56. The three tests of circumstantial evidence were also well set out in the case of Abanga alias Onyango –vs- Republic – Cr. Appeal No.32 of 1996(UR) at page 5 as follows:-

**“It is settled law that when a case rests entirely on circumstantial evidence the prosecution**

must satisfy three tests:-

- i. the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;**
- ii. those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;**
- iii. the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.”**

57. In **Teper –vs- R[1952] AC 480 at page 489** it was held that:-

**“It is also necessary before drawing the inference of the accused’s guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference.”**

58. Lastly in **Sawe –vs- Republic [2003] KLR 364** the Court of Appeal held as follows:-

**“1) In order to justify a conviction on circumstantial evidence the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt.**

**2. Circumstantial evidence can be a basis of a conviction only if there are no other existing circumstances weakening the chain of circumstances relied on.**

**3. The burden of proving facts which justify the drawing of the inference from the facts to the exclusion of any other reasonable hypothesis of innocence is on the prosecution. This burden always remains with the prosecution and never shifts to the accused.**

**4. Suspicion however strong, cannot provide the basis of inferring guilt which must be proved by evidence beyond reasonable doubt.”**

59. I note that PW1’s evidence was never heard as she is turned to be hostile. PW1 has been mentioned crucially by some of the prosecution’s witnesses especially PW3, PW4, and PW6 who stated that she was in the company of the 3 accused persons when they went to get the deceased from his house and even when they took the deceased to his father’s house. Though she refused to testify I have no doubt in my mind that the evidence presented by PW3, PW4, PW5 and PW6 is enough to connect all the accused persons to the death of the deceased person.

60. Firstly, the accused persons were heard by PW3 stating that they needed to discipline the deceased and PW8 for having a love affair because they were cousins.

61. Secondly the accused persons proceeded to deceased’s home on the night of 7<sup>th</sup> February 2009 at 11.00 p.m. and in the process took him in the presence of PW4 telling her that they were taking him to the chief’s camp for discipline.

62. Thirdly, the 3 accused persons later the same night went to the deceased’s father’s (PW5’s) home and told him that his son had committed an offence by having an affair with PW8. They dropped the deceased body in his father’s compound already dead as evidenced by PW5 and ran away only to be later apprehended on different dates. It is instructive to note that after the three accused persons dropped the body of the deceased into his father’s compound, they took off when PW5 and PW6 asked them to explain what had happened to the deceased. To my mind, the conduct of the accused persons of running away instead of explaining to PW5 and PW6 what had happened to the deceased was not consistent with innocence. That, coupled with the testimony of PW4 that the three accused persons took away the

deceased when he was alive proves beyond doubt that the three accused persons are the only ones who can explain what happened to the deceased.

63. The evidence of PW8, PW3, PW4, PW5 and PW6 also points to the chain referred to in the **Abonga case** (supra) that the above circumstances taken cumulatively form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the 3 accused persons and no one else.

64. In the premises, I am satisfied that the prosecution in this case has proved its case against each of the three accused persons beyond any reasonable doubt. Each is accordingly found guilty as charged and convicted under **Section 322 (d)** of the **Criminal Procedure Code**.

65. Orders accordingly.

**Dated and delivered at Kisii this 5<sup>th</sup> day of June, 2014**

**R.N. SITATI**

**JUDGE**

In the presence:

Mr. Majale for State

Mr. S.M. Sagwe with B.O. Masese who is sick for Accused Persons

Mr. Bibu - Court Assistant