

REPUBLIC OF KENYA

High Court at Malindi

Criminal Case 18 of 2011

REPUBLICPROSECUTOR

VERSUS

KAHINDI HARE

KAINGU YAA

CHARO KITSAO KENGA

TIMOTHY KITSAO KENGA

FURAHA ELIJAH YAA

ANDERSON SHAURIACCUSED

RULING

1. The six accused persons were charged with Murder contrary to Section 203 as read with Section 204 of the Penal Code Chapter 63 of the Laws of Kenya. The particulars state that on the night of 26th and 27th May, 2011 at Boyani village, Nyari sublocation, Ganze district within Kilifi County jointly with others not before court they murdered Kaingu Karisa Njole alias Chongoli.
2. The prosecution evidence delivered through four witnesses is circumstantial, to the effect that the six accused persons arrested the deceased on the material night for possession of suspected stolen goods, namely, a mountain bike, two speakers and an amplifier (Exh. 1-3).
3. That the accused later appeared at the home of the area Assistant Chief Edward Charo Bokole (PW2) and reported that a mob had set upon the deceased on the way to the chief's office. When the entire group returned to the scene with police, they found nobody. The deceased's body lay on the ground in a thicket with several cuts on the head. It would appear that the 6th accused was a village elder and the others worked with him as some sort of vigilante group formed to suppress insecurity in the area.
4. At the close of prosecution case, there is no direct evidence to link any of the accused with the injuries that led to the death of the deceased. According to PW2, the accused reported that a mob had set upon the deceased as he was being escorted to the chief's office. Soon thereafter the deceased was found already dead.
5. There is no evidence to contradict the explanation given by the six accused to PW2. The fact that no people were found at the scene at the time does not exclude the possibility that indeed some people were there before and ran off after killing the deceased. The identity of the killers however, remains unknown.
6. The state of the prosecution evidence is such that to call upon the accused to defend themselves would amount to filling the prosecution gaps. I am not satisfied that a *prima facie* case has been established against the accused persons and I will acquit them accordingly at this stage.

They are set at liberty unless otherwise lawfully held.

Delivered and signed at Malindi this **7th** day of **May, 2013**.

in the presence of Accused, Mr. Mayaka for them, Mr. Nyongesa for State, Court clerk – Evans.

C. W. Meoli

JUDGE