



REPUBLIC OF KENYA

IN THE REPUBLIC OF KENYA

AT KAKAMEGA

CRIMINAL CASE NO. 23 OF 2004

REPUBLIC

VERSUS

PIUS WENDO MASHETIACCUSED

RULING

1. The accuse herein, **Pius Wendo Masheti**, was charged with the offence of murder contrary to S.203 as read with S.204 of the Penal Code. It was alleged that on 8.11.2003 at Ivonda village, Iguhu Location in Kakamega District within Western Province, he murdered Arthur Isoyi Ipalapala. He was arraigned before Court on 28.9.2004 where he took his plea and denied the charge. His trial however could only begin on 6.12.2006 when **PW1, Maurice Rabi Amuhaya, PW2, Julius Wikanakana Khamalishi, PW3, Anyesi Kusa Isoyi** and **PW4, Maurice Otunga Likami** testified. *G. B. M. Kariuki, J.*, recorded their evidence and fixed the hearing for 21.3.2007 and 22.3.2007 but it was in fact only on 1.10.2007, the **PW5, Salim Hamisi Andalo** testified. All the witnesses testified in the presence of Assessors and so when **Ochieng, J.** took up the matter on 23.10.2008, it would have been expected that the assessors would be present when present when **PW6, PC Hezron Mukenya** testified. That was the case because by that time the need for assessors had been dispensed with in criminal trials.

2. In any event, **Chitembwe, J.** took up the matter on 30.6.2009 and ordered that the trial would proceed from where Ochieng, J. left it.

3. However, on 7.10.2009, the learned Judge realising that the case had been partly heard with the aid of Assessors, ordered the trial to start de-novo and rescinded his earlier orders. He listed it for hearing on 3.12.2009 when the advocate for the accused was said to be indisposed. Thereafter, no witness was available and on 3.11.2010, the case was closed without any witness testifying.

4. There being no evidence before the court, it follows that no case has been made out to warrant the accused being put on his defence and since he has no case to answer, he is acquitted. He shall be released unless he is otherwise lawfully held.

5. Orders accordingly.

Delivered, dated and signed at Kakamega this 3rd day of March, 2011.

ISAAC LENAOLA

J U D G E