

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS

Criminal Case 45 of 2008

REPUBLIC.....APPLICANT

VERSUS

DICKSON NZIOKA NDOLO 1ST ACCUSED

GEOFFREY NTHIWA KIMANI 2ND ACCUSED

RULING

1. The accused persons, Dickson Nzioka Ndolo and Geoffrey Nthiwa Kimani are charged jointly with the offence of murder contrary to Section 203 and 204 of the Penal Code. It is alleged that on the night of 13th and 14th May 2006 at Kangundo Town in Machakos District of the Eastern Province, they murdered Michael Kaithia. They denied the charge and the evidence on record is as follows:-

PW1, David Nzuki Kithuka recalled that on the material night, he was at work as the Manager, Kavillager's Inn within Kangundo Township when he saw a crowd forming around a fallen man. After calling the OCS Kangundo Police Station, one Mr Onderi, the body was collected and he was then arrested together with a lady called "Kavee". They were released the next day and he did not know two other people who had also been arrested.

PW2, Patrick Wambua, a watchman at Kavillager's Inn recalled that on the material night, a scuffle started outside the bar and when he went out, he saw some people fighting but he could not recognize any of them although there was electric light. He informed PW1 of the incident and the police were called. They made arrests but he did not know who was arrested.

2. Although the accused persons were arrested sometime in 2006, the Republic was unable to call any other witness including one Habiba or "Kavee" who is said to be the only eye witness to the incident. After a number of adjournments and a nolle prosequi being entered and the accused persons being re-arrested and re-charged, the State closed its case on 12/5/2009.

3. The two witnesses who testified stated that they did not know the accused persons and did not see them at the scene on the material night. The evidence before me only points to one fact; that an incident outside Kavillager's Inn in Kangundo on the material night may have led to the death of a person who as of now is unknown. No doctor testified; no investigating officer was called; no arresting officer came to say why the accused persons are in the dock; no eye witness said he saw them in the act and no circumstantial evidence points to the accused persons in any way.

4. In the end, no prima facie case has been made out against the accused persons and they are acquitted forthwith. They shall also be ordered to be released unless they are otherwise lawfully held.

5. Orders accordingly.

Dated and delivered at Machakos this 2nd day of July 2009.

ISAAC LENAOLA

JUDGE

In presence of: **Mr Musila for 1st Accused**

Mr Kiemu for 2nd Accused

N/A for Republic

ISAAC LENAOLA

JUDGE