



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA Criminal Case 9 of 2004**

REPUBLIC PROSECUTION

VERSUS

KAZUNGU MWERO SOMBODZE ACCUSED

RULING

This is a matter in which the Accused KAZUNGU MWERO SOMBODZE was charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence read as follows:-

"KAZUNGU MWERO SOMBODZE:

On the night of 10th and 11th of January 2004 at Kiwandani area, Kilifi Township Location in Kilifi District of the Coast Province, murdered JULIUS BWAGA NDAA"

The plea was taken on 24th April 2006 and selection of assessors in compliance with the law (as it then was) commenced on 18th May 2004. From that time the case did not take off due to various problems with assessors and their attendance to court. On 28th November 2007 the record indicates that Hon. Justice David Maraga discharged all the assessors following an amendment to the Criminal Procedure Code. From 2007 to date, almost two years later the prosecution totally failed to secure the attendance of even one witness to court to testify. On 27th October 2009 when the matter came up for hearing before me yet again no witness was in court. I did allow the State a last adjournment and directed that all witnesses be present and ready to testify on the next hearing date of 30th November 2009. On that day Mr. Onserio for the state sought an adjournment on the basis that no witness was bonded. The circus has to come to an end. To keep an accused in custody awaiting trial for a full five (5) years and to fail to call even one witness is in my view a denial of the right to a fair trial as guaranteed by the Constitution. I declined to allow any further adjournments at

which point the State closed their case. Clearly by failing to call any evidence in this matter the State failed totally to prove any case let alone a prima facie case against the Accused person. He has no case to answer to. I hereby enter a verdict of **NOT GUILTY** in accordance with S. 306(a) of the Criminal Procedure Code.

Dated and Delivered at Mombasa this 17th day of December 2009.

M. ODERO

JUDGE

Read in open court in the presence of:

Mr. Monda for State

Mr. Gichana for Accused

M. ODERO

JUDGE

17/12/2009



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