



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL CASE NO. 12 OF 2005

REPUBLIC PROSECUTOR

VERSUS

MASKATI MUNGA KANYEBWE ACCUSED

RULING

The accused **MASKATI MUNGA KANYEBWE** was charged with **MURDER CONTRARY TO SECTION 203 as read with S. 204 OF THE PENAL CODE**. The trial commenced before Hon. Justice Njagi who heard eight (8) witnesses before he was transferred to Nairobi. I then took over the matter and heard the remaining two (2) witnesses. The prosecution then closed their case. I have now perused the record of the trial. I note that Hon. Justice Njagi did start the case in the presence of assessors in whose presence four (4) witnesses testified. In the case of **BERNARD KINOTI M'ARACHI –VS- REPUBLIC [2008]**, the Court of Appeal held that where a trial is started with the assistance of assessors that trial must be concluded with the aid of assessors. I am however mindful of the fact that the accused has been in custody since April 2005 (5 years) awaiting the determination of his case. I am also mindful of the provisions of Article 50(2) of the Constitution of Kenya which guarantee to every accused person the right to have his trial concluded without unreasonable delay. To declare a mistrial and order a de novo hearing would only serve to further delay the conclusion of this matter. In the circumstances and in order to expedite the trial I invoke S. 150 of the Criminal Procedure Code and hereby direct that **PW1, PW2, PW3 and PW4** be recalled to testify afresh this time with no assessors present. This action will not prejudice the accused who retains the right to cross-examine all these witnesses. This will ensure that all witnesses have given evidence without assessors present. It is so ordered.

Dated and Delivered in Mombasa this 20th day of December 2010.

M. ODERO

JUDGE

Read in open court in the presence of:-

Ms. Sudi holding brief for Mr. Abubaker

Mr. Onserio for State

M. ODERO

JUDGE

20.12.2010



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