

1938.

Kenya.

No. 3251.

SUBJECT

CO 533/438

*Criminal Case*

*Res. v. Ogala & Omura alias Lohayo.*

*(Murder of Mr. Gerald F. Bayer)*

Previous

*18328/32.*

Subsequent

*23010/34.*

1 Ky. Criminal Code 569 — 14 June 1933

Spec. to  
Library.

Pro. copies of the transcript of shorthand  
notes of trial of Ongala & Omura  
alias Zakayo who are charged  
with the murder of Gerald F. Bayer

The case itself does not appear  
to call for comment.

The first Assessor's naive  
question on page 139 reflects  
his appreciation of the evidence.

? Mr. Bushe should see  
the summings-up & judgment.

C. J. [unclear]  
1317/33

Lu-HLH  
6/1

J. [unclear]  
12/7

Putby  
J. [unclear]  
11/9 [unclear]

CW



KENYA.

No. 369.

GOVERNMENT HOUSE  
NAIROBI  
KENYA

27 June, 1935.

RECEIVED  
10 JUL 1935  
C. O. REGY

Sir,

*Gen 21 323/34  
meaning ichyom  
1/247/31 below*

In accordance with instructions contained in paragraph 5 of Mr. Thomas's despatch No. 102 of the 16th July, 1924, I have the honour to transmit for your information copies of the transcript of shorthand notes of the trial of Ogala s/o Onuru alias Zakayo, who was charged at Nyeri in Criminal Case No. 17 of 1932 with the murder of Gerald Francis Bayer, at Nanyuki, in the early hours of the 19th December, 1932. As will be seen from the copy of the Judgment, the accused was acquitted.

I have the honour to be,

Sir,

Your most obedient, humble servant,

*John M. K. O'Connell*

ACTING SECRETARY.

THE RIGHT HONOURABLE  
MAJOR SIR PHILIP CUNLIFFE-LISTER, P.C., G.B.E., M.C., M.P.,  
SECRETARY OF STATE FOR THE COLONIES,  
Downing Street, London, S.W.1.

KENYA.

No. 369.



GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

14<sup>th</sup> June, 1933.

RECEIVED  
10 JUL 1933  
C. O. REGY

Sir,

*Govs. 21323/24  
missing. 10/1/33  
17247/31 below*

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Sir,

Your most obedient, humble servant,

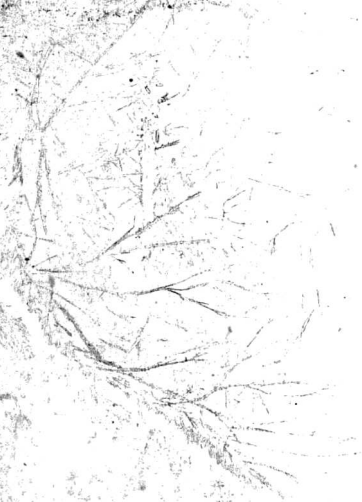
*Wm. McKee*

ACTING GOVERNOR.

THE RIGHT HONOURABLE  
MAJOR SIR PHILIP CUNLIFFE-LISTER, P.C., G.B.E., M.C., M.P.,  
SECRETARY OF STATE FOR THE COLONIES,  
Downing Street, London, S.W.1.

3251/32

Kanga



IN HIS MAJESTY'S SUPREME COURT OF KENYA

SESSIONS HOLDEN AT NYERI

MONDAY, THE 8th MAY, 1933

Before: - HIS HONOUR MR ACTING JUSTICE GAMBLE  
(Sitting with Assessors)

CRIMINAL CASE NO. 17 OF 1933

R E X

versus

OGALA S/O ONURU ALIAS ZAKAYO

(Transcript of Shorthand Notes of Trial)

MEMORANDUM

CRIMINAL CASE NO.

DATE OF TRIAL

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STEN...

GR...

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(The Judgment is copied from the file of His Honour Mr Justice Gamble).

Prosecution.

Accused: I did not kill James Bayo.

MR JUSTICE GAMBLE: I will now ask you a few questions.

ASSESSORS: Orendi s/o Onda (accused)

Olieno s/o Onda

Owino s/o Onda

MR JUSTICE GAMBLE: (to Interpreters) Explain to the jury that they will hear the evidence for the Crown and then they will hear the evidence for the defence and then they will hear the addresses of Counsel for the Crown and defence. Then I shall address them generally on the case and at the

IN HIS MAJESTY'S SUPREME COURT OF KENYA  
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CRIMINAL CASE NO. 17 OF 1933.

R E X

versus

OGALA S/O ONURU ALIAS ZAKAYO

(Transcript of Shorthand Notes of Walter Lee, Official Shorthand Writer to the Supreme Court of Kenya.)

MR P. F. BRANIGAN, Acting Crown Counsel, appeared for the Prosecution.

MR R. BLACK MALCOMSON appeared for the Accused.

P L E A

Interpreter reads Information to Accused.

ACCUSED: I did not kill Bwana Bayer.

MR JUSTICE GAMBLE: I enter a plea of Not Guilty.

Zakayo. ASSESSORS: Onondi s/o Onta (Jaluo)  
 Olienno s/o Owo "  
 Owino s/o Were "

MR JUSTICE GAMBLE: (to Interpreter): Explain to these men that they will hear the evidence for the Crown and then they will hear the evidence for the defence and then they will hear the addresses of Counsel for the Crown and defence. Then I shall address them generally on the case and at the

conclusion they will give me their opinions. During the course of the evidence should they wish to ask any questions they can put their questions through me.

MR BRANIGAN opened the case on behalf of the Prosecution.

MR BRANIGAN: May it please Your Honour and Assessors.

You have just heard that this man, Ogala wa Onuru alias Zakayo (and it is by that name that I shall refer to him) during this case) is indicted for having caused the death of a European farmer called Gerald Bayer on the night of the 18th of December last. My address to you in opening this case for the Crown will be very short and I shall limit myself to placing before you every salient fact and important factor in the Crown case.

Those facts are shortly as follows.

On the night of the 18th December the deceased European, Gerald Bayer, returned from a visit to a friend. He returned some time after 7 o'clock in the evening, and he was apparently in good health.

The accused, Zakayo, appears to have occupied the position of personal boy and head houseboy to Mr Bayer. Some short time prior to the arrival of Mr Bayer a Native Kikuyu from Nyeri had arrived on the farm. He is named Sai, and he is the father of a Native woman called Fatuma. Fatuma was the mistress of Zakayo. She was living with him on the farm, and it would appear that Sai the father of Fatuma came to the farm for the purpose of collecting Shs. 50/- either from Fatuma or from Zakayo the accused.

Shortly after the arrival of Mr Bayer Zakayo went towards the house to see his master with a view to preparing some food for him, and the woman Fatuma and Sai also approached the house and remained outside. Zakayo came out after some time and had

10

some conversation with Fatuma and Sai and returned to his own hut in their company.

Now at that hut they had some food - Zakayo, Sai, Fatuma, and another Native called Karioki who was employed on the farm. Shortly after that, in the course of the meal, Zakayo left the hut in company with Karioki and went towards the Lumbwa huts some 300 yards away. The reason, or the ostensible reason, for that visit was to inform the Lumbwa that a calf was missing and that a search should be made the next day. But something else happened there besides a conversation about a lost calf. Zakayo, who on his own admission, did not possess a spear, asked one of the Lumbwa, Arap Leting, for the loan of his spear. That appeared an unusual request to Arap Leting, and he did not offer his spear for some time. Karioki will come here and tell you that Zakayo gave as his reason for this request that he was afraid to return to his hut 300 yards away in the dark unarmed. He said he was afraid to do so unless he had a spear. At all events this reason did not quite satisfy Arap Leting, but he gave his spear. Zakayo returned to his hut with Karioki and he left the spear outside the hut. Karioki went to his own hut, and Zakayo went into his hut and went to bed with his mistress Fatuma.

Now the next thing we know is that Fatuma awoke at cock crown and felt, or rather failed to feel, the presence of Zakayo, and she noticed he was absent from the hut; and almost immediately on noticing his absence she heard a door being banged, and she will tell you that the sound of the banging of the door came from the direction of Mr Bayer's house some 160 yards away from the hut. She then heard the running footsteps of a man approaching the hut; the door of the hut was opened and in came Zakayo. He took down a kanzu which was hanging on a line and wiped his hands and feet with it. He got into bed; she felt that he was very cold - he was shivering, in fact he

was shaking. He complained about the pulses in his eyes throbbing. He remained in bed until about 6 o'clock. He then got up, and she saw him leave the hut undressed, naked. He was not away very long - about 20 minutes or half an hour - and he returned. He remained in the hut a short time and then dressed. He put on a pair of shorts.

At this time Karioki came to the hut. It is now 6 o'clock or some short time after. In the presence of Zakayo Fatuma made a request to Karioki to get some firewood. Karioki went as if to get it, but he was prevented from doing so by Zakayo who told him that there was no firewood at the house and he would himself get it. Karioki accompanied Zakayo towards the house some short distance but he was told by Zakayo to return. He went back towards the hut. He did not go inside but remained outside and watched. He saw Zakayo walking in the direction of the Lumbwa huts and this time he was carrying a spear. Karioki will tell you that when he and Zakayo left the hut together going in the direction of Mr Bayer's house Zakayo had no spear with him. So it would appear that Zakayo picked that spear up somewhere afterwards when he had told Karioki to return to the hut. Zakayo was away a short time and he returned carrying firewood and without the spear. He came in and deposited the firewood in the hut and went up to Mr Bayer's house. A Native mtoto, Muremi, was already there and was preparing tea in the kitchen.

Zakayo went into the dining-room and he got a jug containing no milk, a sugar-basin containing no sugar, a teapot, a cup and saucer and three scones. He went into Mr Bayer's room and returned almost immediately. He appeared to be distressed, but Muremi says there was no sign of tears or anything like that. Zakayo said nothing to him and went away. Now Zakayo returned to the hut of Fatuma, which was also his own hut, and standing in the door he said: "The Bwana has been killed". He went away

and shortly afterwards a number of people collected in the hut. Zakayo met a Native, who will be called as a witness, at this time and told him to ask Fatuma to throw away the kanzu. Before he had made this request, on his return to the hut, he had taken down the kanzu from the line and had placed it under his pillow. That kanzu was subsequently recovered by the police and was found to have many human blood stains on it. He himself returned to the hut at about 6-30 in the morning and he there had a conversation with Fatuma; and among certain things which he told Fatuma he made one request, and a very significant one. He asked her not to mention that he had been out of the hut that night. The name of the Native whom he requested to ask Fatuma to remove the kanzu is Kimani, who also works on the farm.

Now Zakayo at about 7 o'clock in the morning set off in the direction of neighbouring farms and he brought the news of Mr Bayer's death to two neighbouring farmers.

The police arrived early in the morning and they found Mr Bayer lying on the floor beside his bed with a large quantities of blood spattered round the floor, on the back of the door and round the walls, and some of the splashes reached a height of 5 feet 6 inches from the ground. Mr Bayer was dead. He had died from the thrust of a spear which had penetrated five and a half inches below the left shoulder joint.

Certain clothes belonging to the accused were taken by the police, among them the shorts which he was wearing that morning a goatskin found on the bed of the accused, the kanzu which had been placed under the pillow by the accused, a white shuka lying on the bed of the accused, and a red shuka; and they were sent to the Government Analyst in Nairobi. Human blood was found on the goatskin which was taken from the bed, on the kanzu which was found under the pillow and on which he had wiped his hands and feet that morning, and on the white shuka which was found on the bed.

13  
Now that very shortly is the material evidence which the Crown will lead in this case. The witnesses will be called before you to prove these facts, and then I shall submit to you that if you believe those witnesses the chain of circumstantial evidence has closed so tightly round the accused that you can only come to one decision and that is that the accused Zakayo on the morning of the 19th of December at about 4 o'clock or cock-crow, during the time he was absent from his hut, murdered the European Gerald Bayer by piercing him with that spear which he had borrowed from Arap Leting the previous night and which he returned the next morning.

---

F A T U M A binti M U D A H E M A sworn:

Examined by MR BRANIGAN.

- 1.Q. You know the accused Zakayo? -- A. Yes.
- 2.Q. You used to live at Nyeri with your father Sai? --  
A. Yes.
- 3.Q. And you came to live with Zakayo? -- A. Yes.
- 4.Q. On the farm of Mr Bayer? -- A. Yes.
- 5.Q. How long before the death of Mr Bayer had you been  
living on the farm? -- A. I had been living there  
for one month.
- 6.Q. Do you remember the Sunday when your father Sai came  
to the farm to borrow some moneyp? -- A. He came at  
4 o'clock on Sunday.
- 7.Q. I don't want you to go into a lot of detail. At all  
events you heard Mr Bayer's car arrive some time after  
that? -- A. Yes.
- 8.Q. What time would that be? -- A. It was in the evening  
but I don't know the time.
- 9.Q. Was it dark? -- A. It was not very dark.
- 10.Q. MR JUSTICE GAMBLE: Sunset? -- A. Yes.
- 11.Q. MR BRANIGAN: When he arrived was Zakayo in the hut with  
you and Sai? -- A. Yes.
- 12.Q. And when you heard the car arrive did Zakayo leave the  
hut and go towards the house? -- A. He went away.
- 13.Q. Did you and Sai follow him after some time towards  
the house? -- A. Yes. I went to ask Zakayo where  
my father was going to sleep.
- 14.Q. Did you meet Zakayo outside the house of Mr Bayer? --  
A. Yes.
- 15.Q. Did you talk with him there? -- A. Yes, and Zakayo  
said .....
- 16.Q. We don't want that. Did you return with Zakayo  
towards the hut? -- A. We left Zakayo behind and we  
returned.

- 17.Q. When did Zakayo return to the hut? -- A. He did not stay long.
- 18.Q. When he came back to the hut what did he do? Did he remain there or go out again? -- A. He went out with an 'mtoto' named Karioki.
- 19.Q. Do you know where they went to? -- A. They did not tell me where they went to.
- 20.Q. When did Zakayo return? -- A. They did not stay long. They came back saying they had been to 'Bwana Kisundu's' place.
- 21.Q. What did they do when they came back? -- A. They sat down. He asked my father to go to sleep with the 'watoto'.
- 22.Q. And what did he himself do - the accused? -- A. We lay down.
- 23.Q. Did Zakayo sleep with you? -- A. Yes.
- 24.Q. Before going to sleep did he take off his clothes? -- A. Yes.
- 25.Q. And then you went to sleep as well? -- A. I also went to sleep.
- 26.Q. What was the next thing you noticed during the night? -- A. I turned round at night and I could not find anyone.
- 27.Q. You could not find Zakayo? -- A. Yes.
- 28.Q. Was he in the hut? -- A. I turned round and I could not find him.
- 29 MR JUSTICE GAMBLE: The hut was dark? -- A. Yes. A short time after I heard a sound of running - someone running.
- 30 MR BRANIGAN: Did you hear anything else besides running? -- A. The bang of a door first.
- 31.Q. What direction did the banging of the door come from? -- A. From the side of the European's house.

32.Q. How far away is the European's house do you know from your hut? Point out of the window. -- A. From this Court to the D.C's Court.

MR JUSTICE GAMBLE (to Mr Branigan): Is it as much as 100 yards?

MR BRANIGAN: Between 70 and 100 yards. Approximately between 70, 80 and 100 yards.

33.Q. You heard that door bang. What did you hear after that? -- A. The sound of one running. And my door was pushed.

34.Q. Open? -- A. Yes.

35.Q. And who came in? -- A. It was Zakayo.

36.Q. These footsteps you heard: were they coming in the direction of your hut? -- A. They were coming in the direction of my house.

37.Q. And the door was pushed open and Zakayo came in? -- A. Yes.

38.Q. Could you see him when he came in? -- A. I did not look at him but he was feeling on the line.

39.Q. Is that a clothes line? -- A. Yes.

40.Q. What did he do? -- A. I heard someone wiping himself.

41.Q. Was it the person who came in? -- A. Yes.

MR JUSTICE GAMBLE: What sort of a noise would that be, Mr Branigan?

42 MR BRANIGAN:(to witness): How do you know who was wiping himself and what with? -- A. The person was feeling. Then he sat down. I heard the sound of his wiping himself.

43.Q. How far away was the person from you? -- A. Quite close to me. He sat on the bed where I was.

44.Q. And then when he had finished wiping himself what did he do? -- A. I called him then. I asked him to come

and lie down. "Kuja lela", what is the matter with you? Then he said "I am feeling cold".

45.Q. Who said? -- A. Zakayo said.

46.Q. Did he say anything else? -- A. Then he came and lay down and he said he was feeling some tears were dropping "I don't know what will happen to me". He said he was feeling cold. Then he said he felt as if tears were falling from his eyes.

MR JUSTICE GAMBLE: I suppose he was crying.

INTERPRETER: 'Cheza, cheza'.

47 MR BRANIGAN: What else did he say? -- A. He said "I don't know what will happen to me to-morrow.

48.Q. What was his physical state in bed? Was he calm or shaking? -- A. His heart was beating.

49.Q. Could you feel it? -- A. Yes.

50.Q. Anything else did you notice? Did you notice anything else about Zakayo the accused when he was lying down beside you? Did he say anything else? -- A. He did not say anything further.

MR JUSTICE GAMBLE: I observe, Mr Branigan, that in the lower Court the witness said the accused's eyes were troubling him and he did not know whether he would

MR BRANIGAN: To-day she says he did not know what would happen to him to-morrow. There is a difference between "he did not know whether he would see" and "what would happen to him the next day".

MR BRANIGAN (to Interpreter): I think you had better ask the witness if the exact words Zakayo said to her

MR BRANIGAN: There are some things which are referring to his eyes and the following day were "what would happen to him".

INTERPRETER: He did not know how he would see to-morrow.

MR JUSTICE GAMBLE (quoting from his notes): "My eyes are not understand Kiswahili yourself.....

MR JUSTICE GAMBLE: 'cheza cheza' and I don't know what will happen to me to-morrow".

51 MR BRANIGAN: (to witness): What were the exact words? --  
 Also What I shall see to-morrow. I don't know what I shall see to-morrow. (By Interpreter) The meaning is  
 52 MR JUSTICE GAMBLE: what will happen to me to-morrow.

MR JUSTICE GAMBLE: I am still not clear. My impression is that what the witness is saying with regard to to-morrow refers to the accused's eyes.

MR BRANIGAN (to Interpreter): Will you give His Honour the exact words.

INTERPRETER: 'Macho yangu nacheza cheza. Sijui vile  
 53 MR JUSTICE GAMBLE: Juita-kavyona kesho'.

MR BRANIGAN (to Interpreter): Are those the exact words? What is the translation of them?

INTERPRETER: "I don't know what I shall see to-morrow".  
 54 MR JUSTICE GAMBLE: That is the literal translation. It means "I don't know what will happen to me to-morrow".

MR BRANIGAN: That means what?

MR JUSTICE GAMBLE: You are turning the interpreter into a witness now, Mr Branigan. He cannot say the words mean so and so.

58 MR BRANIGAN: If he is asked to translate from one language  
 59 MR JUSTICE GAMBLE: into another he must translate idiomatically. He has given the literal translation and now he is giving  
 60 MR JUSTICE GAMBLE: what the words mean idiomatically. As an interpreter ..

MR JUSTICE GAMBLE: I don't think it is the proper way of  
 61 Q. doing it ... he away? --

MR BRANIGAN: There are many idiomatic phrases in the  
 62 Q. English language and I submit it is a reasonable thing to put down the literal meaning of the words and what  
 63 Q. the idiomatic interpretation is? If Your Honour did not understand Kiswahili yourself.....

MR JUSTICE GAMBLE: I think the proper way to do it is to get the D.C.'s interpreter and put it to him. It would be better than putting it to the present interpreter who is not a Swahili by birth. You see, it is a point of considerable importance.

52 MR BRANIGAN: Am I at liberty to ask the witness to whom the words were spoken what meaning she put to them?

(To witness): What did you understand the words to mean? -- A. I did not understand because I did not

67.Q. know what he had done? -- A. He said there was

55.Q. That is good enough for me. Did you understand him to be referring to the physical conditions of his eyes?

68.Q. Yes.

54 MR JUSTICE GAMBLE: Did you understand the expression

69 MR J. "Sijui vile mitaavyona kesho" to refer to his eyes?

70 MR BRANIGAN: Yes? -- A. Because he said his eyes were playing about that is what I understood by that.

55 MR BRANIGAN: For how long did he remain in bed with you after this conversation?

Stayed what time? -- A. He

60. A. He left very early in the morning before the sun

71.Q. was up. Kaya left the hut did Keriki go a bit of the

56.Q. Did you see him go outside the hut? -- A. Yes.

57.Q. Was he wearing any clothes? -- A. Not inside with me.

58.Q. Did you hear in what direction he went? -- A. We saw the

59 MR JUSTICE GAMBLE: Did he shut the door when he went out?

73.Q. No. A. He left the door wide open. When he left the

60 MR BRANIGAN: And did you hear in what direction he went?

74.Q. Yes. A. He was away for a short while and came back.

61.Q. How long was he away? -- A. A few minutes, not many minutes and a spear at that time.

62.Q. Was he sufficiently long away to allow him to reach the house of the European and return? -- A. No.

63 MR JUSTICE GAMBLE: What did he do then? -- A. When he came back what did he do? -- A. When he came back or was he still naked? -- A. He had his clothes. He

returned an mtoto Karioki came the same time with him.

77 MR I sent him, Karioki, to get firewood. Zakayo said there was no firewood.

64.Q. Did you ask Karioki to go to any particular place, or is there any particular place where firewood is kept?  
-- A. In the kitchen.

65.Q. Of what house? -- A. Mr Bayer's kitchen.

66.Q. That is the place where he would have got the firewood if he had gone? -- A. Yes.

67.Q. And what did Zakayo do? -- A. He said there was no firewood.

68.Q. Anything else? -- A. He did not say anything further. Only there was no firewood there.

69 MR JUSTICE GAMBLE: The kitchen is detached from the house?

70 MR BRANIGAN: Yes. (To witness): Did Zakayo do anything himself then? -- A. We looked at him. I and Karioki looked at Zakayo when he was going off. He went to the direction of 'Kisundu' (a Native name for another European).

71.Q. When Zakayo left the hut did Karioki go a bit of the way with him? -- A. No. Karioki did not go with him.

72.Q. Where did Karioki stand? -- A. He was inside with me. MR We peeped through a hole in the door and we saw the accused going away.

73.Q. MR Had he anything in his hand at the time he left the hut? -- A. Empty-handed when he came out of the hut.

74.Q. When you saw him going towards the other European's house did you see him with anything in his hands? --

A. He had a spear at that time.

75.Q. Were you able to see what place he picked up the spear?  
-- A. I did not see where he picked up the spear.

76 MR JUSTICE GAMBLE: Had he got his clothes on at this time or was he still naked? -- A. He had his clothes. He

88.Q. Do you see the European's wearing his clothes.

77 MR BRANIGAN: That road leading towards the European's house we call 'Kisandu': does it also lead towards the Lambwa huts? -- A. Yes.

78.Q. And it was in that direction he was going with the spear? -- A. He was not there a long time. He came back.

79.Q. Did he have the spear with him when he came back? --

80.Q. Was it? A. No. He came back with three pieces of firewood.

80.Q. Was it chopped firewood or firewood picked up on the way? -- A. Chopped firewood.

81.Q. Where did you keep the chopped firewood? -- A. At Mr Bayer's.

82 MR JUSTICE GAMBLE: You saw him get it there? -- It always came from the kitchen.

83 MR BRANIGAN: Did you have chopped wood at any other place? -- A. No.

84.Q. About how long was he away from the time he left the hut and when you saw him going with the spear until he returned with the firewood? -- A. I cannot tell the minutes.

85.Q. Was it half an hour or an hour?

MR JUSTICE GAMBLE: I don't think the witness knows much about time.

86 MR BRANIGAN: When he returned with the firewood were there any other people in the hut besides you and

Karieki? -- A. Only two of us: myself and Karieki.

87.Q. What was the next thing said or done? -- He came

in and threw down the firewood. He said "My master has been killed; my 'msungu' has been killed".

88.Q. Was that at the time he brought the firewood? --

A. Yes.

A. He did nothing; he went away.

- 89.Q. Do you know whether or not he had gone towards Mr Bayer's house to give him morning tea at that time or whether he went afterwards? -- A. I saw him going this time and I thought he went to take tea to him.
- 90.Q. At the time he went to get firewood? -- A. Yes.
- 91.Q. Did you see him going towards Mr Bayer's house at the time? -- A. I saw him going in the direction of his master's house.
- 92.Q. Was that the time when he left the house having told Karieki that there was no firewood in the kitchen or was it another occasion? -- A. That is the time.
- 93.Q. To come back to the time when he entered the kitchen with the three pieces of firewood, where was he standing when he said that the master has been killed? -- A. He was standing at the ~~ix~~ door.
- 94.Q. Did he seem to be terribly shocked or surprised? Did he seem to be very worried about it? -- A. If he was worried he could not have asked that tea be made for him. He could not have asked for tea.
- 95 MR JUSTICE GAMBLE: He asked you for tea? -- A. Yes, he asked me to make tea for him.
- 96 MR BRANIGAN: And then what did he do? -- A. He ran to report to 'Bwana Kisundu'
- 97 MR JUSTICE GAMBLE: He had his tea? -- A. He did not have time to take his tea. Hewent before he had taken his tea.
- 98 MR BRANIGAN: 'Bwana Kisundu' is the European who lives near? -- A. Yes.
- 99.Q. Before he left for the European's farm to inform him of the death of Mr Bayer, did Zakayo do anything in the hut? Did you notice him do anything in the hut? -- A. He did nothing; he went away.

- 100.Q. How long was he away? Was he a long time?
101. MR JUSTICE GAMBLE: When he went to 'Bwama Kisundu's'? --  
A. I cannot tell the time.
- 102 MR BRANIGAN: Did he return to the hut? -- A. He stayed  
out; then he came back when all the Europeans came.
- 103.Q. Were there many people in your hut at the time he came  
back? -- A. Yes.
- 104.Q. Did Karioki come to the hut? -- A. Yes.
- 105.Q. Did he say anything to you? -- A. He did not tell me  
anything.
- 106.Q. When Zakayo returned did he say anything? -- A. He  
came in and hid the kanzu under the pillow.
- 107.Q. Was that his own kanzu? --- A. Yes.
- 108.Q. Where was the kanzu lying? -- A. It was on the line.
- 109.Q. Is that near the bed? -- A. Yes.
- 110.Q. Did you notice any marks on it? -- A. Yes.
- 111.Q. What sort of marks? -- A. Blood.
- 112.Q. Were there many? -- A. Many, but not very many.
- 113.Q. What did he do with the kanzu? Did he fold it up? --  
A. He put it in his hand, folded it up, and put it  
under the pillow.
- 114.Q. What happened after that? -- A. "Have you named me?"  
And he said, "Yes, I have".
- 115 MR JUSTICE GAMBLE: Has he named who? -- A. "Have you  
given my name as your witness?" And he said "Yes, I  
have". I asked Zakayo "Have you mentioned my name as  
a witness, and he said "Yes".
- 116 MR BRANIGAN: What else? -- A. "If you were to be asked by  
anyone about me, say I didn't even go out to make  
water or to ease myself".
- 117.Q. You mean leave the hut? -- A. Yes.

- 118.Q. Did he say anything else? -- A. I told him "My father has gone away", and he said "It doesn't matter". I told my father that Zakayo .....
- 119.Q. You cannot tell us that. You made a statement to your father? -- A. Yes.
- 120.Q. And as a result did your father leave the farm? -- A. Yes.
- 121.Q. Zakayo left the hut after that conversation with you in which he said "Do not tell anybody that I left the hut even to make water". Did he come back ~~XXXX~~ again? -- A. He went away and he did not return.
- 122.Q. Did he make any request to you with regard to the kanzu? -- A. He told me nothing about the kanzu.
- 123.Q. The previous night when Zakayo returned to the hut ...  
MR JUSTICE GAMBLE: You mean the night Mr Bayer was killed?
- 124 MR BRANIGAN: The night preceding the morning when Mr Bayer was killed, when Zakayo returned to the hut to go to bed did you notice any marks on his body? Any cuts or bruises? -- A. I could not see because it was dark.
- 125.Q. Before going to bed with Zakayo the first time that night, did you notice any marks or cuts or bruises on him? -- A. Not a single mark.
- 126.Q. If he had a cut here (indicating) below his nose on his lip would you have noticed it? -- A. I could have seen it, yes.
- 127.Q. Are you quite sure there was no cut there? -- A. He had no cut there I am sure.
- 128.Q. I want you to bring your mind back to what you told us the accused did when he came in after you had heard the door bang. You remember you said he sat on the bed and you heard him take something from the clothes line.
- 129 MR JUSTICE GAMBLE: I think you might ask the question

whether it was a clothes line or whether it was a line - a screen - round the bed? -- A. It is used for both purposes. A screen and for putting clothes on.

150 MR BRANIGAN: What clothes were on the line that night? --

A. There was a kanzu, a kanga (thin cloth - a woman's wrap) and other clothes were there on the line.

151.Q. Were you able to see or hear what part of his body Zakayo was wiping with the kanzu when he was sitting on the bed? -- A. As if he were wiping his feet.

152.Q. Was there very much rubbing? Describe the rubbing.

A. Much rubbing - yes.

153.Q. Are you able to fix the time of the morning or night when you first missed Zakayo from your side <sup>in</sup> ~~of~~ the bed? The time you heard the banging of the door? --

A. I heard the cock crow.

154 MR JUSTICE GAMBLE: First time? -- A. One cock crow.

155.Q. The first cock crow is at 4 o'clock? -- A. Yes.

156.Q. Was it the first or the second? -- A. The first cock crow.

157 MR BRANIGAN: And between that time and the time that Zakayo left naked later in the morning did you sleep? From the time that he returned and wiped his feet and came to bed and complained about his eyes: from that time until Zakayo left did you go to sleep? -- A. I did not sleep again.

158.Q. Are you able to tell us whether Zakayo slept when he came back? Did he ~~leg~~ wake on the bed or did he go to sleep? -- A. He did not sleep.

159.Q. You told us his heart was beating. Did it continue to beat for some time - until he left the bed the next morning?

MR JUSTICE GAMBLE: The only record is that his heart was beating.

- 140 MR BRANIGAN: Do you mean it was just beating as it does every night, or much more loudly? -- A. Not as usual.
- 141.Q. Was it very loud? -- A. Yes.
- 142.Q. Did you notice anything else about him? Was he lying calmly in bed or was he shaking? (To Interpreter): Can you translate shivering? -- A. He was trembling.
- 143.Q. Did he continue to tremble for some time? -- A. Yes.
- 144 MR JUSTICE GAMBLE: He may have been trembling from cold?
- 145 MR BRANIGAN: Was it for some time? How long? -- A. I cannot tell the time.
- 146.Q. Was it a long time - until he got up again? -- A. He was trembling and then he stopped.
- 147.Q. After he had said "I don't know how I am going to see tomorrow", or "What I am going to see tomorrow", did he say anything else while lying in bed with you? -- A. He did not say anything further.
- 148.Q. Did he make any sound? -- A. No.
- 149.Q. Do you know these shorts? (Same handed to witness). -- A. Yes.
- 150.Q. Whose are they? -- A. Zakayo's.
- 151.Q. Are those the shorts he was wearing that morning?
- MR JUSTICE GAMBLE: Which morning, Mr Branigan?
- 152 MR BRANIGAN: The morning Mr Bayer died? -- A. Yes.
- (Shorts marked "Exhibit 1").
- 153.Q. Do you know this goatskin? (Same handed to witness). -- A. That is used on the bed.
- 154.Q. Do you recognise it? -- A. Yes.
- 155 MR JUSTICE GAMBLE: On whose bed? -- A. On our bed.
- 156 MR BRANIGAN: Was that on the bed on the morning of Mr Bayer's death. The morning he was killed? -- A. Yes.
- (Goatskin marked "Exhibit 2").

157.Q. Do you know that kanzu? (Same handed to witness). --

A. That is Zakayo's kanzu.

158.Q. Was that the kanzu he hid under the pillow that morning? -- A. Yes.

(Kanzu marked "Exhibit 3").

159.Q. That red and white kanga? (Same handed to witness).

-- That is my kanga.

160.Q. Where was it on the morning Mr Bayer was killed? --

A. It was on the line.

(Kanga marked "Exhibit 4").

161.Q. And the white shuka? (Same handed to witness). --

A. That is Zakayo's.

162.Q. Where was that on the morning Mr Bayer was killed? --

A. On the bed.

(Shuka marked "Exhibit 5").

Cross-Examined by MR MALCOMSON.

163.Q. What tribe does Sai belong to? -- A. Nyamwezi.

164.Q. Is not Sai your father? -- A. My mother is Kikuyu and my father Nyamwezi.

165.Q. Do you claim to be Nyamwezi? -- A. I am not of Nyamwezi country.

166.Q. What tribe do you belong to? -- A. Kikuyu.

167.Q. And your father is Nyamwezi? -- A. Yes.

168.Q. And your mother? -- A. Kikuyu.

169.Q. What language is your mother tongue? -- A. I can speak all the languages, Kikuyu, Kiswahili, and Nyamwezi.

170.Q. What language do you speak best?

171 MR JUSTICE GAMBLE: What language do you ordinarily speak?

-- A. Kikuyu.

- 172 MR MALCOMSON: Do you know Kiswahili thoroughly? -- A. Not very well.
- 173.Q. Is Sai really your father? -- A. Yes, he is my real father.
- 174.Q. What evidence did you give in the lower Court as to Sai's relationship? -- A. The same that I have stated here to-day.
- 175.Q. What occupation has your father? -- A. He is working as a porter at the quarry, digging stones.
- 176.Q. Has he been in work lately? -- A. No. When he went there he was not in employment.
- 177.Q. Does he ever work? -- A. Yes.
- 178.Q. What did Sai come to the farm for? -- A. To ask money from me for taxes.
- 179.Q. Hut taxes? -- A. Yes.
- 180.Q. How much is the hut tax? -- A. 12/-.
- 181.Q. How much did he ask Zakayo for? -- A. I asked money from Zakayo.
- 182 MR JUSTICE GAMBLE: At Sai's request? -- A. Yes. Sai asked money from me and I asked Zakayo.
- 183 MR MALCOMSON: How much money did Sai ask you for? -- A. 12/-.
- 184.Q. How much did you ask Zakayo for? -- A. The same amount.
- 185.Q. In the evening before the European was murdered did you go into his house? -- A. I went to the house to ask Zakayo where my father was going to sleep.
- 186.Q. Did you go into the house then? -- A. I did not enter the house.
- 187.Q. If anyone said that you went into the house and stayed there half an hour would he be saying what is false? -- A. I did not enter.
- 188.Q. Can you tell me according to the clock what time is

cock crow? -- A. I don't know. I only heard the cock crow.

189.Q. What is the time the cock crows first? -- A. I do not know.

190.Q. Is it about the time one turns over in bed?

MR JUSTICE GAMBLE: Is there any fixed time for turning over, Mr Malcomson?

MR MALCOMSON: There is, Your Honour.

191.Q. You have sworn that the door banged in the house of the European? -- A. Yes.

192.Q. Can you swear definitely that that sound was the sound of a door in the European's house? -- A. I can swear to that.

193.Q. Is there no other sound which resembles that? -- A. There is no other house near.

194.Q. Would the sound of a door in a Native hut resemble it? -- No.

195.Q. Did that sound appear to be the sound of a door on the outside of a house or of a door in the inside of the house? -- A. I only heard the banging of the door, that is all.

196.Q. Can you not say whether the sound of an inside door banging or an outside door bang would differ? -- A. How can I tell? I only heard the bang of the door. I could not tell what door it was.

197.Q. Was it not the sound of a window banging? -- A. The sound was like that of a door; not of a window, but a door.

198.Q. You have sworn that Zakayo when he came back during the night was wholly clothed and that he was running?

MR JUSTICE GAMBLE: Did she say that, Mr Malcomson? I think she said the reverse, that he came back naked.

MR BRANIGAN: Is this the first occasion - the time of the

banging of the door?

MR JUSTICE GAMBLE: There is no evidence, but the presumption is that he had no clothes on and he got into bed.

199 MR MALCOMSON: When Zakayo came back running from the house was he clothed or unclothed? -- A. I could not see, it was dark. He came running, pushed the door open and sat on the bed. I could not see: it was dark.

200.Q. Would you expect a man who had been running fast to come in shivering with cold? -- A. Although a man was shivering, but his heart could not be beating.

201.Q. Let me have that again? -- A. A man may come in trembling but his heart could not be beating.

MR JUSTICE GAMBLE: I should have thought that the natural corollary to running fast would be that the heart would be beating fast.

202 MR MALCOMSON: Would you expect a man who had been running fast to be cold? -- A. When he was running he would be feeling hot, not cold.

203.Q. Were there any strange Kikuyus on the European's farm on the day before the European was killed? -- A. There were some strange Kikuyus who came to the farm.

204.Q. What are the names of those strange Kikuyus? -- A. Karioki, Wamboga, and another one Karanja.

205.Q. Is that the same man as the toto Karioki? -- A. This Karioki is a big man, not a toto. Another Karioki.

206.Q. Were those all the strange Kikuyus on the farm that day? -- A. They were not strangers; they were working there.

207 MR JUSTICE GAMBLE: You were asked strangers? -- A. Those three had gone away to the Kikuyu Reserve and had just returned.

208.Q. They belonged to the farm? -- A. Yes, they were staying on the farm.

209 MR MALCOMSON: I want to ask that question again, Your Honour. (To witness): Were there any Kikuyus on the farm who were not working on the farm? -- A. I did not see any.

210.Q. Were there any strange Kikuyus - strangers - on any of the neighbouring farms? -- A. I did not see them. I cannot say whether there were any strange Kikuyus on neighbouring farms or not. I did not see them.

211.Q. Do you know if the lock on the outside door of the European's house was a good one? -- A. I do not know.

212.Q. What sort of a lock was it? Do you know anything about the lock at all? -- A. I do not know.

213.Q. As regards the position of the outhouses with the farm itself. Can you see the boiler-house from the kitchen? -- A. Yes, I could see the boiler from the kitchen.

MR JUSTICE GAMBLE: What is this boiler-house, Mr Malcomson? Is it the place where they heat the bath water?

MR MALCOMSON: I believe so, Your Honour.

214.Q. What day was it when these exhibits were taken away from your hut? -- A. This day, Monday.

215.Q. Who took those things away? -- A. The askari.

216.Q. Was that an askari in uniform? -- A. A detective. He was not in uniform.

217.Q. And this happened on the Monday? -- A. Yes.

218.Q. What time was it you asked the toto Karioki to get firewood? -- A. At sun rising.

219.Q. Can you see the door of the farmhouse from the boiler-house? -- A. No. One cannot see the door from the boiler.

MR JUSTICE GAMBLE: I think most of these questions about the position of the doors and windows should be put to the European witnesses, Mr Malcomson.

MR MALCOMSON: According to the

MR MALCOMSON: I want to test her in every shape and form,  
Your Honour.

MR JUSTICE GAMBLE: I gather looking at the plan which is  
not yet in that her statement is correct.

220.Q. MR MALCOMSON: Are you afraid of Zakayo? -- A. Yes.

221.Q. Has he paid any sheep for you? -- A. No.

222.Q. Is there any reason therefore why you should not have  
left him if you had wanted to? -- A. No.

223.Q. Did you see the Kikuyu called Karioki on the farm the  
evening before the murder - the Kikuyu said to have been  
beaten by Mr Bayer on a previous date? -- A. That  
Karioki was there.

224 MR JUSTICE GAMBLE: And he had been beaten by the deceased?  
-- A. Yes, he was beaten by his master.

225 MR MALCOMSON: When Zakayo came back to the hut during the  
night running, did you know that he had killed anyone?  
-- A. How would I know?

226.Q. Quite so. Do you believe now that Zakayo killed the  
European? -- A. Yes. Where had he been that night?

227.Q. Quite so. You slept with Zakayo after you say he had  
killed the European? -- A. Yes, we slept together.

228.Q. Have you had food with him since? -- A. No.

229.Q. Or touched his clothes? -- No, I have not touched  
his clothes.

230.Q. At any rate, you slept with him after you believed he  
had killed this European? -- A. He did not tell me  
he had killed the European.

MR JUSTICE GAMBLE: Mr Malcomson, is it not probable that  
she did not realise that the European was dead until  
the accused told her in the morning? I don't think  
there is any suggestion that they slept together after  
that.

MR MALCOMSON: According to her belief he was killed by the

accused somewhere about 4 o'clock in the morning.

MR JUSTICE GAMBLE: She did not know he was dead. I thought you were asking why had she slept with the accused when she knew him to be a murderer.

MR MALCOMSON: No, on the point of credibility, Your Honour.

- 231.Q. Does the fact that you slept with the accused after he had killed involve uncleanness? -- A. He came and lay down on the bed.
- 232.Q. Does that involve ceremonial uncleanness among the Kikuyus? -- A. No. That is not ceremonial uncleanness.
- 233.Q. Have you procured goats for a sacrifice? -- A. No.
- 234.Q. Have you made any sacrifice on account of ceremonial uncleanness? -- A. No. I have made no sacrifice for uncleanness.
- 235.Q. Can you tell where the lamp which the European used in his bedroom usually stood? -- A. I do not know.
- 236.Q. When Zakayo told you in the morning that his 'mzungu' was killed, will you give us the exact words which he used? -- A. "Mzungu wangu amekwisha uswawa". I will go and report to 'Bwana Kisundu' that a European has been killed".
- 237.Q. Was he fully dressed at that time? -- A. He was wearing a shirt and trousers?
- 238.Q. Boots? -- A. No, he had no boots.
- 239.Q. Hat? -- A. Yes.
- 240.Q. He had a hat? -- A. Yes, he was wearing his hat.
- 241.Q. Would you think it a natural thing for an African Native who had killed someone during the night to dress himself so carefully as to put his hat on after the occurrence? -- A. He would not go the whole day naked.
- 242.Q. A man is hardly naked if he has not his hat on? -- A. A man would put on his clothes after he had

murdered someone.

- 243.Q. Were there any strange Lumbwa on the shamba the day previous to the murder? -- A. I did not see any.
- 244.Q. Is there a window in your hut? -- A. No.
- 245.Q. Was there a good light when Zakayo returned shortly after the first cock crow that morning? -- A. What light?
- 246 MR JUSTICE GAMBLE: Was there any light? -- A. He pushed the door and he came in. There was no light.
- 247 MR MALCOMSON: Do you mean there was no light in the hut? -- A. Yes.
- 248.Q. Was there any light outside the hut? -- A. I did not see outside.
- 249.Q. Was there any light coming into the hut from outside? -- A. No.
- 250.Q. Was it a moonlight night or not? -- A. I did not see the moon.
- 251.Q. Did you see the light of the moon? -- A. I did not see it.
- 252.Q. Were there any clouds that night? Was it a cloudy night? -- A. I do not know whether it was a cloudy evening or not.
- 253.Q. Was Zakayo very drunk on the Sunday, the day previous to the murder? -- A. He had drunk some tembo.
- 254 MR JUSTICE GAMBLE: Was he drunk? -- A. He was not very drunk.
- 255 MR MALCOMSON: Had you also taken tembo? -- A. I did not take tembo.
- 256.Q. Are African Natives afraid of the spirits of the dead? -- A. Yes. I do not know.

MR JUSTICE GAMBLE: I do not think the interpretation is quite what you asked, Mr Malcomson. I think it is a very difficult question to get out of this witness.

265. Q. What the interpreter asked was: Are Africans afraid of Satan?  
A. Yes.
- MR MALCOMSON: Do you know Kikuyu, Mr Interpreter?
- INTERPRETER: Yes, sir.
266. Q. You said Kikuyu... after...  
267. Q. Well ask the question in Kikuyu, if I may? -- A. They pour out tembo for a departed spirit. They are afraid of the spirits of the dead.
268. Q. So am I, too. Would a Native after having killed a person return to the scene of the killing? -- A. If he has not been seen by other people killing he would go there.
269. Q. Would he not be afraid of the spirit of the dead man? -- A. He could not see the departed spirit. It could not jump on him and get him.
270. Q. Could he not feel the power of the departed spirit?  
MR JUSTICE GAMBLE: I don't think we are getting much about.  
271. Q. MR MALCOMSON: I want to... further on this point. Kikuyus converted to Islam are not much authorities on the question. On this particular point, I mean.
272. Q. MR MALCOMSON: Why do the Kikuyus offer sacrifices to the spirits who have gone? -- A. In remembrance of the departed spirits of their relatives.
273. Q. MR MALCOMSON: Is it an easy thing to tell from what direction a sound comes? Supposing one were standing here in this room and a sound was heard, is it easy to say it came from the left or right or from straight ahead or behind? -- A. I can tell what direction the sound came from although I am in the house.
274. Q. Are there any bridges between...  
275. Q. (To witness): How does your... house of the European? -- A. Yes.
276. Q. Is there any fastening on the door of your hut? -- A. With a nail.
277. Q. A twisted nail, or how? -- A. We push the door in and then push the nail out to hold the door from inside.
278. Q. Are they placed close together? -- A. Yes.

- 265.Q. When Zakayo came running during the night into the hut was the nail in position on the door? -- A. He fastened the door. It was not fastened inside.
- 266.Q. You said Zakayo's heart was beating when he came back after running? -- A. Yes.
- 267.Q. Do you know anybody's heart which doesn't beat? -- A. I don't know.
- 268.Q. Neither do I. You made a statement as to what Zakayo said about his eyes after he came back. Will you give in Kikuyu a literal translation of what he said? -- A. 'Kioya' is the Kikuyu word.
- 269.Q. I want a translation into Kikuyu of what Zakayo said. A literal translation regarding his eyes? -- A. In Kikuyu it is called 'Kioya'.
270. MR JUSTICE GAMBLE: For what? -- A. His eyes were playing about.
- 271.Q. MR MALCOMSON: I want the sentence which was used by Zakayo. I want a literal translation into Kikuyu.  
INTERPRETER: The accused spoke to her in Kiswahili.
- 272.Q. I want it translated into Kikuyu? -- A. 'Kioya diui oia gona rushao'.
- MR MALCOMSON: Translate that now into English.
- INTERPRETER: I don't know what I shall see tomorrow.
- 273.Q. (To witness): How does your hut face? Towards the house of the European? -- A. My hut faces the European's house.
- 274.Q. Are there any bridges between your hut and the European's house? -- A. Yes.
- 275.Q. Are they rough bridges or what? -- A. Small ones made of wood. Two wooden bridges.
- 276.Q. Are they rough bridges? -- A. Rough temporary ones.
- 277.Q. Are they dressed or plain wood? -- A. Small sticks.
- 278.Q. Are they placed close together? -- A. Yes.

- 279.Q. Did you take Zakayo's things into your hands this morning in Court? -- A. Yes.
- 280.Q. Does that involve ceremonial uncleanness.
- 281.Q. I cannot tell. Yes, it is ceremonial uncleanness.
- 282.Q. Will you then procure a goat for sacrifice for purification? -- A. I do not know.
- 283.Q. What do you mean by that? -- A. Since there was a death about those clothes there must be a goat for sacrifice.
- 284.Q. Do you intend to sacrifice a goat? -- A. Yes.
- 285.Q. You were asked to say whether when you heard Zakayo rubbing himself during the night it was his feet he was rubbing, and you said "Yes". Is there a difference in the sound between rubbing the feet and the head? -- A. I heard someone was rubbing his feet.
- 286.Q. Is there a difference in the sound between rubbing the feet and the head? -- A. He was quite close to the bed. When he was rubbing his feet he would bend down to where his feet were.
- 287.Q. Did he bend down? -- A. Yes.
- 288.Q. How long has Zakayo been on this farm? -- A. I have not been there very long so I don't know.
- 289.Q. Who is this 'Ewana Kisundu' you have mentioned? -- A. I don't know what he is doing but they call him 'Ewana Kisundu' because he had some rabbits.
- 290.Q. You have sworn that you and Karioki the toto peeped through the door after Zakayo went up to the house. What did you do that for? -- A. I asked Karioki whether Zakayo had a friend out there, and then I said: "I don't know where he had been during the night".
- 291.Q. What happened after that? -- A. We saw him going off with a spear.
- 292.Q. But why did you not open the door to look out and see

properly? -- A. We peeped through the door.

293.Q. But why? -- A. We saw.

294.Q. But why did you look through the hole in the door? --

295 MR JUSTICE GAMBLE: Why did you not open the door and look out? -- A. When we were about to open the door he went away.

296 MR MALCOMSON: Did you see where he picked up the spear he was carrying that morning? -- A. I did not see.

297.Q. Where was the first place you saw him with the spear?

-- A. He was going on the road in the direction of 'Bwana Kisundu's' with the spear.

298.Q. What sort of a spear - Kikuyu or Meru? -- A. I have seen it with the Lumbwa.

299.Q. How far away was it when you saw that spear in Zakayo's hand? -- A. A little distance away.

300.Q. Could you identify easily that it was a Lumbwa spear?  
-- A. I saw it from a distance away and I cannot identify it.

301.Q. But you have said already that you knew it was a Lumbwa spear? -- A. I have seen the Lumbwa with it.

302 MR JUSTICE GAMBLE: With this spear or one like it? --

A. I have seen the Lumbwa with this kind of spear.

303 MR MALCOMSON: Is there much difference between the spears

of the Kikuyu and those of the Lumbwa? -- A. They are all of them of the same kind.

304.Q. Where was the firewood belonging to the European kept?

-- A. In the house where I was staying. Not all the fuel; only three pieces.

MR JUSTICE GAMBLE: Ask the question again, Mr Malcomson.

305 MR MALCOMSON: Where was the firewood belonging to the

European kept? -- A. In the boiler-house where they boil water.

306.Q. Was it all kept there? -- A. I have seen people taking

the fuel there.

307.Q. You have said there were many people in your hut on the Sunday evening. Who were they? -- A. Karanja, Ngatia, my father Sai, Karioki, Mbugwa, and another Karioki, and Marisimi.

308.Q. Any more? -- A. No.

309.Q. You have said there was no light in the hut when Zakayo came back that morning at cock crow? --  
A. There was no light.

310.Q. And there was no light coming in from outside? -- A. No.

311.Q. Why therefore did you say you could see the cut on his upper lip if there had been one there?

MR BRANIGAN: She did not say that. She said before she went to bed.

MR JUSTICE GAMBLE: Yes, that was earlier in the evening.

312 MR MALCOMSON: Had you no light in the hut before you went to bed on the Sunday? -- A. Yes. We had lighted the fire.

313.Q. Was it a bright fire? A. Yes.

MR BRANIGAN: No re-examination, Your Honour.

314.MR JUSTICE GAMBLE: Was there a gale of wind that night? Was it blowing hard? -- A. No.

315.Q. Do you know of any quarrel between the accused and the European? -- A. No.

316.Q. Did you ever hear the accused use any threats towards the deceased? -- A. No.

317.Q. Did the accused talk about his master as though he were fond of him - as though he liked him? -- A. I heard him saying "We are friendly; we are getting on all right"

THE COURT ADJOURNED AT 12-50 UNTIL 2 p.m.

327. Q. THE COURT RESUMED AT 2-5 p.m.

His Honour reads over in Kiswahili the evidence of the last witness Fetuma binti Mudahema.

(The witness withdrew).

HAROLD DENNIS TONKING sworn:

Examined by MR BRANIGAN:

318. Q. What are your qualifications, Doctor? -- A. Member of the Royal College of Surgeons and Licentiate of the Royal College of Physicians.
319. Q. You are an Assistant Bacteriologist in the Government Service? -- A. I am.
320. Q. On the 21st December last you received certain sealed packets, sealed with the seal of the Kenya Police? -- A. I did.
321. Q. And those packets were sent to you from the Assistant Superintendent of Police stationed at Nyeri? -- A. They were.
322. Q. Did you break the seals and open the packets? -- A. I personally opened the packets.
323. Q. What did the packets contain? -- A. There were seven exhibits in all - various garments and a tin containing earth and an envelope containing dung said to be from the cattle boma.
324. Q. The first exhibit sent to you in those packets was a pair of khaki shorts. (Exhibit No. 1 handed to witness) -- A. Those are they.
325. Q. You carried out certain tests for blood on stains on those garments? -- A. I did.
326. Q. And what was the result? -- A. There was blood on the trousers. I was unable to determine whether it was of human origin or not.

327.Q. Was that because there was not sufficient quantity?  
-- A. Even with the precipitin test it may be due to the dye on the garment having spoilt the test or to the quantity of blood. In this case I think it was a combination of the two, but I am unable to say definitely.

328 MR JUSTICE GAMBLE: There is a more elaborate test than the precipitin test? -- A. Not to my knowledge, Your Honour.

329 MR BRANIGAN: Now the second article was a goatskin which had been found on the bed of the accused. Is that the goatskin? (Exhibit 2 handed to witness). -- A. Yes that is it.

330.Q. Did you also carry out blood tests on that? -- A. There was human blood on the goatskin.

331 MR JUSTICE GAMBLE: Much? -- A. I will show you the small stain.

332.Q. Spots? -- A. Spots, yes.

333 MR BRANIGAN: The next article which you examined contained in that package was a kanzu which was the property of the accused. (Exhibit 3 handed to witness). -- A.

This is the kanzu.

334.Q. Did you examine that also? -- A. I examined it and the stains were of human blood. The distribution of the stains is rather peculiar. Most of the stains are

on the back of the garment and they appear as though a hand has been wiped on it - you see the imprints of fingers. And there are also stains inside the kanzu.

335 MR JUSTICE GAMBLE: Show me what you mean by wiping? --

A. They have the appearance to me as if they have been wiped by fingers.

336.Q. You will not swear to it? -- A. Not swear to it. It is my opinion.

337 MR BRANIGAN: You also drew attention to the fact that many

of the stains are on the inside of the kanzu? --

A. Yes. And from the distribution of the stains it appears probable that the kanzu was not being worn at the time the stains were deposited.

338 MR JUSTICE GAMBLE: Why do you say that, Doctor? -- A. Well, Your Honour, if you had bloodstained hands and you had a garment like this you would not reach up behind your shoulder-blade to wipe your hands. Also the fact that they are high up on the back of the kanzu

339 MR BRANIGAN: You draw that from the distribution of the stains? -- A. Yes.

340.Q. When you received that garment first, before carrying out tests, would you say there were many bloodstains? -- A. Yes, there must have been a good many stains. There are three definite large areas and small parts cut out for examination.

341.Q. And there are some all round the collar? -- A. Yes.

342.Q. You also examined a white shuka? (Exhibit 5 handed to witness). -- A. This is the shuka. That also had blood on it.

343.Q. Did you also examine what has been variously described as a red shuka or a kanga?

MR JUSTICE GAMBLE: Kanga, is correct.

344 MR BRANIGAN: Did you find human blood stains on that kanga? (Exhibit 4 handed to witness). -- A. There was human blood on the shuka also.

345.Q. Were there many blood stains on it? -- A. Very few on this.

346.Q. With regard to those other exhibits - 6 and 7. They are not very important. There was a tin containing earth from the accused's hut forwarded to you for

353.Q. examination?

347 MR JUSTICE GAMBLE: Where is this tin? -- A. The entire

MR JUSTICE GAMBLES: contents were used in the examination.

348 MR BRANIGAN: Then Exhibit 7? -- A: That was just some  
gum in an envelope. There are no remains of that.

349 MR JUSTICE GAMBLES: All used up in the tests? -- A. Yes,  
it was all put in solution, Your Honour.

Line from 16.

Cross-examined by MR MALCOMSON.

(The witness withdrew).

350.Q. Speaking generally on these exhibits as a whole, doctor,  
would you form the opinion that those stains were on  
the accused and transferred to these exhibits? In the  
case of a man who had been stabbed and had probably  
bled to death - as regards quantity? -- A. I should  
say they were not from the direct bleeding of a human  
being. There was only one slightly suspicious as a  
jet of blood on the leg of the shorts, but that was  
not human blood. They all show characteristics of  
being smeared.

351.Q. Assuming then that these stains were indirectly  
transferred, would you be of the opinion that the  
original cause was that of a man who had directly bled  
to death? -- A. The stains on the exhibits were  
caused by a man bleeding to death on the exhibits?  
Is that what you mean?

352.Q. If a person had killed another by stabbing in a case  
such as this and if he had then cleaned himself on  
floor. If he was then standing with his feet  
these exhibits would the quantity of blood on these  
exhibits tend to show that they had been from the blood

MR JUSTICE GAMBLES: Just there? (Indicating)  
of the victim? -- A. It is impossible to express an  
opinion. You can stab a man and jump hurriedly back  
surface of the shoulder blade. That stopped  
and in that case you would have no blood on you at  
examined the wound and found that the artery  
all.

353.Q. You would not care to express an opinion on that point?  
long and 5 1/2" deep. I came to the conclusion that  
-- A. I do not think it is possible.

death was due to haemorrhage.  
(The witness withdrew).

MR JUSTICE GAMBLE: You found no human blood stains that showed signs of being a direct jet or spurt? -- A. No, Your Honour. I would just like to add that a stain made by a jet of blood is extremely characteristic. You have a large spot and a series of small spots in a straight line from it.

(The witness withdrew).

MR BRANIGAN: I propose to call Dr Leig, Your Honour. He is not in the correct sequence but it would be a great help to him to get away.

KENNETH ALAN CRAWFORD LEIG sworn:

Examined by Mr BRANIGAN.

- 354.Q. You are a Member of the Royal College of Surgeons in England and a Licentiate of the Royal College of Physicians, London? -- A. Yes.
- 355.Q. You are practising at Nyeri? -- A. Yes.
- 356.Q. You remember the 19th December last? -- A. Yes.
- 357.Q. As a result of a request made to you you proceeded to the farm of the late Mr Gerald Bayer? -- A. Yes.
- 358.Q. You knew him personally? -- A. Yes.
- 359.Q. You went into his house and in his bedroom I think you found Bayer's body? -- A. Yes.
- 360.Q. Describe the position? -- A. He was lying on the floor. He was naked and surrounded with blood. There was a deep wound in the region of the left armpit.
- 361 MR JUSTICE GAMBLE: Just there? (Indicating). -- A. Yes. Going downwards and backwards as far as the anterior surface of the shoulder blade. That stopped it. I examined the wound and found that the axillary artery and vein had been severed. The wound was about 2½" long and 5½" deep. I came to the conclusion that death was due to haemorrhage.

- 562 MR BRANIGAN: With regard to the actual position of the body and what surrounded it? -- A. It was lying on the ground on the floor.
- 563 Q. Beside the bed? -- A. Yes.
- 564 Q. Much blood around? -- A. A tremendous lot.
- 565 Q. Did you notice any blood on the walls? -- A. Yes, nearly up to the ceiling.
- 566 Q. Did you notice any blood on the back of the door? -- A. Yes.
- 567 Q. Was it high up? -- A. Yes, there were some big stains and splashes up to 5 feet.
- 568 Q. Had rigor mortis set in at that time? -- A. Yes.
- 569 Q. How long had the body been dead in your opinion? -- A. About 12 hours.
- 570 Q. And what time did you see it? -- A. About 2-30 P.M.
- 571 Q. And in your opinion the body had been dead 12 hours? -- A. Yes. Rigor mortis was very advanced.
- 572 MR JUSTICE GAMBIE: You say at least 12 hours? -- A. I came to the conclusion 8 to 12 hours.
- 573 MR BRANIGAN: (From the position of the wound and the direction in which the wound was caused would you say it could have been self-inflicted?) -- A. No, I think it was quite impossible for it to have been self-inflicted. -- A. Yes; identical.
- 574 Q. Shortly after the infliction of the wound would Bayer become unconscious? -- A. Three to five minutes I should think. Yes; passing through the wound it went
- MR JUSTICE GAMBIE: What is the Crown's suggestion - that the deceased was in bed and fell on to the floor or
- 575 Q. Do you form any other opinion with regard to the wound?
- 575 MR BRANIGAN: With regard to the position of the wound, have
- 576 MR JUSTICE GAMBIE: Do you form any opinion as to the position in which the victim was when the blow was struck? -- A. I thought

- 362 MR BRANIGAN: With regard to the actual position of the body and what surrounded it? -- A. It was lying on the ground on the floor.
- 363.Q. Beside the bed? -- A. Yes.
- 364.Q. Much blood around? -- A. A tremendous lot.
- 365.Q. Did you notice any blood on the walls? -- A. Yes, nearly up to the ceiling.
- 366.Q. Did you notice any blood on the back of the door? -- A. Yes.
- 367.Q. Was it high up? -- A. Yes, there were some big stains and splashes up to 5 feet.
- 368.Q. Had rigor mortis set in at that time? -- A. Yes.
- 369.Q. How long had the body been dead in your opinion? -- A. About 12 hours.
- 370.Q. And what time did you see it? -- A. About 2-30 p.m.
- 371.Q. And in your opinion the body had been dead 12 hours? -- A. Yes. Rigor mortis was very advanced.
- 372 MR JUSTICE GAMBLE: You say at least 12 hours? -- A. I came to the conclusion 8 to 12 hours.
- 373 MR BRANIGAN: From the position of the wound and the direction in which the wound was caused would you say it could have been self-inflicted? -- A. No, I think it was quite impossible for it to have been self-inflicted.
- 374.Q. Shortly after the infliction of the wound would Bayer become unconscious? -- A. Three to five minutes I should think.
- MR JUSTICE GAMBLE: What is the Crown's suggestion - that the deceased was in bed and fell on to the floor or what?
- 375 MR BRANIGAN: With regard to the position of the wound, have you formed any opinion as to the position in which the victim was when the blow was struck? -- A. I thought

- he might have been lying on his right side or sitting up and turning towards the door.
- 576.Q. In your opinion is it very unlikely that it was caused while he was standing? -- A. Yes, I should think. That is in view of the fact that the wound was downwards.
- 577.Q. Did you examine the wound carefully afterwards? -- A. Yes.
- 578.Q. Did you measure it? -- A. Yes.
- 579.Q. Did you form any opinion as to what kind of instrument would cause the wound? -- A. It was not a very sharp instrument because the edges of the wound were bruised.
- 580.Q. From the measurement that you made of the wound did you form any opinion as to what type of instrument would have caused the wound? -- A. It was 5½ inches deep. I was shown a similar spear to that (indicating spear in Court). I fitted it into the wound and as the spear reached the back of the wound it was 5½ inches deep.
- 581.Q. Can you identify the spear? -- A. No. It had a crack in it. (Witness examines spear in Court). It was a similar spear to that.
- (Spear marked "Exhibit 6").
- 582 MR JUSTICE GAMBLE: You experimented with a spear identical with this? -- A. Yes, identical.
- 583.Q. And it went 5½ inches in? -- A. Yes.
- 584 MR BRANIGAN: In fact did that spear head exactly fit the wound? -- A. Yes, passing through the wound it went where the arteries were divided and fetched up in front of the shoulder blade.
- 585.Q. Did you form any other opinion with regard to the wound as to whether there was any struggle or not? -- A. No.
- 586 MR JUSTICE GAMBLE: Did you see any signs of a struggle? -- A. No.
- 401.Q. A. No. position was the body in when you was

587 MR BRANIGAN: Before I leave the question of the wound.

Was the blood on the floor spread round a large area?

-- A. The floor was flooded with clotted blood.

588.Q. Did you notice the passage outside the door? --

A. That had blood on it. The police told me they had been in and out.

589.Q. Do you recognise the accused in Court? -- A. Yes.

590.Q. Did you see him that day? -- A. Yes.

591.Q. Did you examine him? -- A. I looked at him carefully.

592.Q. Did you find him suffering from any wound? -- A. He had scratches under his nostril and on his leg.

593.Q. MR JUSTICE GAMBLE: One or more? -- A. Two, Your Honour.

594.Q. And one on his leg? -- A. I thought it was older.

Being an abrasion I thought it was a bit septic and it had the scab knocked off.

595 MR BRANIGAN: Do you think the loss of blood from those scratches would have been of large quantity or not?

-- A. No, not of large quantity.

596.Q. Would you describe the loss of blood from those scratches as being small? -- A. Yes.

597.Q. Were they bleeding? -- A. It was dried up.

598.Q. Do you think from such a scratch it is possible for a man to bleed very much? -- A. No. It might look a lot on a white handkerchief but the quantity was very small.

599.Q. Do those remarks apply as well to the scratch on the leg? -- A. I should think there was less bleeding from the scratch on the leg.

(demonstrates). Cross-examined by MR MALCOMSON:

400.Q. Was the head of the bed towards the door? -- A. No.

If that was the door the bed was along this way.

MR JUDGE (Witness indicates), rather outside the doctor.

401.Q. What position was the body in when you saw it? --

A. The head towards the door and the feet towards the bottom of the bed. Honour.

402. Q. Was there a window opposite to the door in that room?

A. Yes, not quite opposite, but more or less.

405. Q. Did you see any sign of pyjamas on the bed or near

412 MR MA about? -- A. No.

404 MR JUSTICE GAMBLE: The body was naked? -- A. Yes, when I

saw it.

405 MR MALCOLMSON: Your opinion is that the deceased was stabbed

413. Q. while in bed? -- A. Either propped up on an elbow or

sitting up.

406. Q. Would that not mean that his assailant would have to

lean right over the bed in order to hit on the left

shoulder? -- A. I don't think so.

407. Q. If he was lying flat? -- A. But if he was on his side

or sitting up there would be no necessity.

408. Q. Assuming that an assailant came in through the door

it would mean that he would have to turn round in order

414. Q. to stab the man he wanted to kill? -- A. No, I don't

think so. Not necessary. They may have moved the bed

before I got there.

409. Q. The head of the bed is at the side of the door according

to the plan, and looking at it an assailant would walk

in through the door with the head of the bed on his

417. Q. left hand and then he would have to turn round in order

to target? -- A. I don't think he would have to turn

418. Q. very much. If I came in this door and the man was here

I could do it without having to turn round. (Witness

demonstrates.) how those came there? -- A. I don't

410. Q. Would it be possible for the assailant to get in through

the window? -- A. I suppose it would be possible yes.

MR JUSTICE GAMBLE: It is rather outside the doctor's

419 MR MALCOLMSON: I think the officer who made the plan may be

did you form any opinion as to what the

able to give you that information.

MR MALCOMSON: Yes, Your Honour.

411 MR JUSTICE GAMBLE: I take it, doctor, you only looked at it from a medical point of view? -- A. Yes, that is all.

412 MR MALCOMSON: Any assailant striking with a spear or similar weapon in circumstances such as we assume this happened would be altogether covered with blood? -- A. Not necessary.

415.Q. Would it be possible as has been suggested that he would stab and jump back? -- A. I don't think much blood would spurt until he withdrew the spear. It depends how quickly he got out of the door. The bed was quite close to the door. One stab and he was out.

414.Q. So it is possible he might have got away without very much blood on him? -- A. Quite, yes.

415.Q. How far would the first spurts of blood ~~travel~~ travel? -- A. Six feet I should think.

416.Q. Assuming that the deceased was lying or resting on his elbow and was stabbed in that position would the stains on the back of the door correspond with the spurting which would take place? -- A. Yes, I think they would.

416.Q. Certainly the ones on the wall opposite would and some would have got the door had he moved at all.

417.Q. You say the head of the bed was towards the door? -- A. Yes.

418.Q. There are stains on the outside of the door and on the walls of the passage I believe. Could you express any opinion as to how those came there? -- A. I only noticed stains on the floor of the passage which I was told

418 MR MALCOMSON: Assuming that the deceased was struck and standing. Would it have been necessary for the assailant to have been a strong man judging from the nature of the wound? -- A. Yes.

MR JUSTICE GAMBLE: That is not evidence.

419 MR MALCOMSON: Did you form any opinion as to what the

deceased did after he was stabbed? -- A. I think that with the shock of the blow he jumped out of bed.

420.Q. Are there any other weapons which could inflict such a wound as this one alleged to have been caused with a spear? -- A. Not common weapons likely to be found in private houses. A bayonet wound would be very similar.

421.Q. This weapon has not been made an exhibit so far, but I take it this is the stick Sai had with him. You see this stick, Doctor? Could that wound have been inflicted with something like this? -- A. No.

422.Q. Not even if it had been moved in the wound? -- A. I don't think so.

(Stick marked "Exhibit A").

423.Q. This spear which is alleged to have caused the wound. Would not that be covered with blood from the wounded man? -- A. Yes, it would be covered with blood.

424.Q. When you saw the spear first, did you see any blood stains on it? -- A. No.

425.Q. Did it show any signs of having been scraped or cleaned in any way? -- A. All Native spears seem to show signs of scraping.

426.Q. Would there be blood down the woodwork? -- A. I rather doubt it. There might have been a drop or two but I rather doubt it.

427 MR JUSTICE GAMBLE: The spear you experimented with had no apparent signs of blood?

428 MR MALCOLMSON: Assuming that the deceased was struck while standing. Would it have been necessary for the assailant to have been a strong man judging from the nature of the wound? -- A. Yes.

429 MR JUSTICE GAMBLE: I thought the witness said it could not have been caused while the deceased was standing.

However the wound was caused there was great force used?

-- A. Yes.

450 MR MALCOMSON: If I may still assume that the deceased was struck while standing, would the assailant have been a tall man judging from the wound? -- A. Yes.

451.Q. The wound I think was slightly downwards? -- A. He would of course lift his spear and it was downwards and backwards.

452.Q. Was the deceased a tall man? -- A. Yes, he was tall.

453.Q. Six feet? -- A. Approximately I should say 5' 11" or 6 feet.

454.Q. A previous witness has given evidence to the effect that the accused came running from the farm down to his hut, a distance of 70 to 80 yards. She states he was cold when he came in and was trembling. Would you consider that a man who had committed this murder and then run 60 or 70 yards - would you expect him to be cold? -- A. Yes, he might have suffered from shock or fright in spite of the fact that he had run that distance.

455.Q. Would such a shock come immediately after the act? -- A. Very soon, I should think. Immediately he realised what he had done.

456.Q. Would it be a matter of seconds or minutes? -- A. Within a few minutes.

457.Q. Assuming that this was the spear which caused the death. Would you think that the spear striking the bone.....

-- A. It did not strike the bone. Below the bone.

Only the tip point just struck the tip of the shoulder blade at the back.

458 MR JUSTICE GAMBLE: Was the bone chipped in any way? --

A. The bone was chipped, yes.

459 MR MALCOMSON: The spear was stopped? -- A. Below the collar

- 440.Q. It was not stopped by bone? -- A. It went through the flesh until it touched the bone.
- 441.Q. Would not the spear be blunted against the bone? --  
A. I don't think so.
- 442.Q. It is of iron or steel which is rather soft metal? --  
451 MR JUSTICE GAMBLE: A. It entirely depends on the force. There is a thick layer of muscle before it hits the bone.
- 443.Q. You say this spear was fitted into the wound. Before you examined the wound the Sub-Assistant Surgeon had been there. Had the wound been altered in appearance after his examination? I believe he dissected it? --  
452 MR WILCOXSON: Unless the occurrence I mean.  
A. He opened the wound; he did not enlarge it. He just cleaned it so that he could see the ends of the divided blood vessels. It did not enlarge the depth or length.  
Ex. 5).
- 444.Q. Would there be any difference in the size of that wound immediately after it was caused and say a quarter of an hour afterwards? -- A. I don't think so.
- 445.Q. What I want to convey is this: Assuming as there was a tremendous loss of blood would that loss have enlarged the wound? -- A. I don't think so. There is no pressure on the wound.
- 446.Q. There was so much less matter, even fluid matter, surrounding the wound? -- A. No.
- 447.Q. In the case of death, doctor, does the blood cease flowing at once? -- A. No.
- 448.Q. Within a very short period? -- A. From a big artery like the aorta it would spurt out great gushes; the amount would then slow down. I could not say how long to stop the heart beating or very short.
- 449.Q. Until the heart stops beating the flow continues? --  
453 Q. A. Until the heart stops beating.
- 450.Q. Referring to these exhibits - the clothing. I think

you have already seen them. Having seen the tremendous amount of blood in that room would you say that the assailant might possibly have cleaned himself in any way with those?

451 MR JUSTICE GAMBLE: Put the question this way. How much blood would the assailant have on his person? Would you expect the assailant to be covered with blood? --  
A. Unless he got out of the room immediately. If he stayed there he would be covered with blood.

452 MR MALCOMSON: Unless the assailant had left the scene of the occurrence immediately he would be covered with blood; and even if he had not left quite so quickly would you say that these clothes had been used by the assailant to clean himself? (Witness examines Kanzu, Ex. 5). -- A. It certainly looks as if blood had been wiped off on to it. At present it is very small; I see that they have cut out some of it.

MR JUSTICE GAMBLE: I think you must leave it at that. The doctor says it depends on how soon he got out of the room. As there is no evidence how long the assailant stayed there I don't think he could answer the question.

Re-examined by MR BRANIGAN.

453. Q. You were asked something first about the kind of man who could have caused this wound, and you said something about he would require to be a strong man? --

A. Powerful man I said, to use such force.

454. Q. Could that wound have been inflicted by a man of the same physique as the accused? -- A. Yes.

455. Q. Would you describe the accused as a powerful man? --

A. Yes, muscular. I like to express my opinion.

456. Q. You were asked about the condition of the spear when it was handed to you at 2-50 on the day of the murder.

You said the spear had no blood stains? -- A. None that I could see with the naked eye.

457.Q. Would it have been a very easy thing to clean the spear of any blood stains? -- A. Yes, very easy, fresh blood stains.

458.Q. A man who caused that wound with a spear and left the room would have no difficulty in cleaning the spear forthwith and removing every blood stain? -- A. None at all.

459.Q. You have been asked about the condition of the accused - your mind has been brought to bear on the condition of the accused when he returned to the hut, when Fatuma the first witness described his condition as being cold, that he was trembling and his heart was beating much more than on normal occasions, and you have I think said that the cold state of his body might have been due to shock? -- A. Yes.

460.Q. I want to ask you about the beating or thumping of his heart. Do you think .....

MR JUSTICE GAMBLE: Does that arise out of cross-examination?

I don't think it arises unless Mr Malcomson mentioned the beating of the heart. He merely said "If a man had run 70 or 80 yards would he be cold.

461 MR JUSTICE GAMBLE: You say the deceased would have been conscious for three or four minutes. He would be capable of shouting? -- A. Certainly, for a minute or two.

462.Q. Would a normal man shout 100 yards? -- A. If the wind was in his favour.

463.Q. We have evidence of a door 160 yards away being heard? -- A. I would not like to express an opinion.

464.Q. Do you think he might have shouted? -- A. I should think a man being struck like that would shout,

certainly.

(The witness withdrew)

WILLIAM ROBERT BERNARD PUGH sworn:

Examined by MR BRANIGAN.

- 465.Q. You are an Assistant Superintendent of Police? -- A. Yes.
- 466.Q. At the time of this murder you were a European Police Constable in charge of Nanyuki? -- A. Yes.
- 467.Q. On the 19th December last as a result of information you received you went to the late Mr Gerald Bayer's house? -- A. Yes.
- 468.Q. What time did you arrive there? -- A. Approximately 8-55 a.m.
- 469.Q. Did you go into Mr Bayer's bedroom? -- A. I did.
- 470.Q. Will you describe what you saw? -- A. Going in through the door.....
- 471.Q. Did you make a sketch plan? -- A. Yes.
- 472.Q. Have you got the original? -- A. No.
- 473.Q. Where is it? -- A. I should think it is at Nanyuki.
- 474.Q. What did you hand into the Court below? -- A. The sketch<sup>-es</sup> on the Police file.
- 475.Q. Were they made by you? -- A. Yes. (Sketches produced).
- MR JUSTICE GAMBLE: This is different from the one I have on my file.
- MR BRANIGAN: This plan of course would not be evidence. There is a sketch of the body there. (To witness): Is there one without the body being shown? (Plan produced to witness).
- 476.Q. Did you make that? -- A. Yes.
- 477.Q. And did you make copies from the sketch plan? -- A. Carbon copies.
- 478.Q. Carbon copies. Was it in? -- A. It was cleaner than one would expect taking upto.....

- 478.Q. This sketch plan is of the deceased's bedroom where his body was found that morning? -- A. Yes.
- 479.Q. You describe here a doorway on the bottom right-hand corner of the plan, marked "A"? -- A. Yes.
- 480.Q. That is a doorway? -- A. Yes.
- 481.Q. Then 4' 2" in from the door in a straight line you mark a place "B". What is that? -- A. That is a mark on the ceiling. I think either plan B or C refers to the position of the deceased.
- 482.Q. At any rate there is something here we can refer to, that is the bed. Did you make any measurements how far from the door the bed was? -- A. Sufficient to put in an ordinary dining chair between the door and the bed.
- 483.Q. Now do you know whether many people had entered the room before you came on the scene or not? -- A. I have no knowledge of that.
- 484.Q. Did you see any footprints of people having entered? -- A. No.
- 485.Q. Where was the deceased lying? -- A. He was lying with his head towards the wall in which the door was situated on the floor. He was lying on his stomach.
- 486.Q. The floor of the room - what state was it in? -- A. It was covered with blood, sir.
- 487.Q. Outside this bedroom there is a passage-way or corridor leading from where? -- A. From the kitchen. The kitchen is situated outside the house.
- 488.Q. It passes first of all the office, the lavatory, a bedroom, the bathroom to another bedroom.
- 489.Q. Did you notice the floor of the passage that morning? -- A. Yes, about 2" in diameter.
- 490.Q. What condition was it in? -- A. It was clean. Rather cleaner than one would expect taking into account the

weather at the time.

490.Q. Any pieces of mud on it? -- A. No.

491.Q. Did you notice the ground outside? -- A. Yes. It was wet.

492.Q. Did you form any conclusion with regard to the passage?  
A: It gave me the impression of having been swept out.  
It certainly had not been washed out.

MR JUSTICE GAMBLE: Is that evidence, Mr Branigan?

MR BRANIGAN: Evidence of the witness's impression.

MR JUSTICE GAMBLE: How can he say it had been swept out?

It might have been a vacuum cleaner.

493 MR BRANIGAN: You got the impression it had been swept? --  
A. Yes.

494.Q. With regard to the bed? -- A. The bed clothes had been turned back from the bed away from the door.

495.Q. Any blood on the bed clothes? -- A. Yes, on the sheets and on one of the blankets.

496.Q. Was the deceased wearing pyjamas? -- A. He was naked.

497.Q. Did you see any pyjamas there at all? -- A. There were a pair of pyjama trousers lying on the floor just at the foot of the bed and they were soaked with blood.

498 MR JUSTICE GAMBLE: Folded or open? -- A. Wrapped up in a ball, Your Honour.

499.Q. Pyjama coat? -- A. No trace in the bedroom at all.

500 MR BRANIGAN: Did you see any stains outside in the passage-way? -- A. Yes, sir. There were stains of blood in the passage outside the door.

501 MR JUSTICE GAMBLE: You mean on the wall of the passage? --  
A. On the floor.

502 MR BRANIGAN: About how many? -- A. About half a dozen large drops about 2" in diameter.

503.Q. Did you notice the window of the bedroom? -- A. It was wide open. It was a double window. Both were open.

- 504.Q. Did you examine it? -- A. Yes.
- 505.Q. Did you find any stains? -- A. None at all.
- 506.Q. Did you examine the ground outside the window? -- Yes.
- 507.Q. Did you see any marks? -- A. No, sir. It was a flower garden and had been recently cultivated. There were no signs of marks at all.
- 508.Q. Having left the bedroom did you examine the kitchen? -- A. Yes. On the table on the right hand side of the doorway as you go into the kitchen was a tray on which there were tea things. There was a tea pot with cold tea in it; there was a cup and saucer and no spoon - the cup was clean, it had not been used; there was a sugar bowl and spoon; there was no sugar in the bowl; there was a plate with three scones on it. That is all.
- 509.Q. Did you mention the butter? -- A. There was no butter on the tray.
- 510.Q. All those things were on the tray? -- A. Yes.
- 511.Q. Did you instruct P.C. Cheruyet to go to the hut of Zakayo? -- A. I instructed two to go, Sir. 3rd Grade Constable Cheruyet and P.C. Maku to go to the accused's hut.
- 512.Q. Did they return? -- A. They did.
- 513.Q. What did they bring? -- A. They brought the exhibits, one white kanzu (Ex. 3) with blood on it, and a white shuka (Ex. 5) and one kanga (Ex. 4), a goatskin (Ex. 2).
- 514.Q. You took those into your custody? -- A. Yes, sir.
- 515.Q. What did you do with them? -- A. When Mr Higgins took charge at Nyeri I put the exhibits in the back of his car in which his orderly and the Sub-Assistant Surgeon were with him. I counted them in and put them in loose. They were wrapped up in the shuka.
- 516.Q. With regard to the shorts? A. They were taken from the accused by Mr Higgins.

- 517.Q. Were you present on the same day when the Sub-Assistant Surgeon, Mr Shah, came and examined the body? --  
A. I was.
- 518.Q. Did you identify the body as that of Mr Bayer? --  
A. Yes, I identified the body as that of Gerald Francis Bayer.
- 519.Q. Were you present when he made his post-mortem examination? -- A. I was.
- 520.Q. On that day did you arrest the accused? -- A. I did.
- 521.Q. When you arrested him was he wearing those shorts? (Ex. 1). -- A. Yes.
- 522.Q. With regard to the spear. Do you produce the spear now in Court? -- A. It was handed to me by P.C. Cheruyet and I took it into my custody.
- 523.Q. And you handed it in to the Court below? -- A. Yes, sir.  
(Spear marked Ex. 6).
- 524.Q. From whom did you receive the spear? -- A. From No. 38 3/Grade Cheruyet.
- 525.Q. Did he obtain that spear as a result of your instructions -- A. Yes.
- 526.Q. With regard to this door leading into Mr Bayer's house, leading into the passage-way, did you carry out experiments? -- A. I carried out experiments with the bedroom door.
- 527.Q. That is inside the other door? -- A. Yes. The other door is a half door in which the top panels have come out.
- 528 MR JUSTICE GAMBLE: Which door is that? -- A. It is the back door leading from the kitchen into this passage.
- 529.Q. I thought the kitchen was outside? -- A. Yes, sir.
- 530 MR BRANIGAN: I think we had better put in this other plan.
- 531.Q. Did you make a sketch plan of the whole house and the kitchen? -- A. Yes.

549. MR BRANIGAN (to His Honour): Is the original on your file, Your Honour?

MR JUSTICE GAMBLE: No. Only a carbon copy is on my file. Here is the original of the house and of the lay-out of the grounds.

551 MR BRANIGAN (to witness): Have a look at that plan, (Plan handed to witness).- A. I made this sketch of the deceased's house.

(Plan marked "Exhibit 8").

552 MR JUSTICE GAMBLE: And this is the plan of the grounds?

-- A. Yes, Sir, which I also made the same day.

(Plan marked "Exhibit 9").

553 MR BRANIGAN: Where is this half door you have been talking about? (Witness indicates on plan to His Honour).

554 MR JUSTICE GAMBLE: There is only one door into the house?

-- A. Yes, Sir; and a double door in the front.

555 MR BRANIGAN: The half door is the entrance to the house from the kitchen? -- A. Yes.

556.Q. The door with which you carried out your experiments was the bedroom door? -- A. Yes. I left P.C. Cheruyet in the deceased's bedroom and instructed him to allow some time to elapse to give me an opportunity of getting down to the accused's hut, then to bang the bedroom door once. I went down to the accused's hut. I went inside and shut the door of the hut. After some time I heard a door bang.

557.Q. What <sup>kind</sup> ~~time~~ of day was this? -- A. It was a windy day and the wind was coming from the direction of the mountain and it would be diagonally across the direction of the sound.

558.Q. Did you hear it distinctly? -- A. Fairly distinctly.

559.Q. And did you give the P.C. a few trial bangs before you left? -- A. No, I just told him to bang the door.

540.Q. You have no idea as to the bang he gave? -- A. No idea as to the force at all.

541 MR JUSTICE GAMBLE: How far away is the accused's hut from the deceased's house? -- A. Approximately 150 yards, Sir.

Cross-examined by MR MALCOMSON

542.Q. Was the outer door of the house shut when you saw it first? The entrance door into the house? -- A. I am afraid I am unable to answer that question.

543.Q. I mean the door which leads towards the kitchen? -- A. I am afraid I did not notice.

544.Q. Is there another door in front of the house? -- A. There is a double door leading from the verandah into the large sitting room.

545.Q. As regards the deceased's bedroom. How many ways are there of getting into the bedroom? -- A. Two ways, sir; through the door and through the bedroom window.

546 MR JUSTICE GAMBLE: Only one legitimate way? -- A. Only one legitimate way, Sir.

547 MR MALCOMSON: You examined the window thoroughly for finger prints and footmarks? -- A. Yes.

548.Q. Any signs? -- A. None whatever. The ground outside was a flower garden and there were no marks. The day before it had rained.

549.Q. Any footprints would have been easily seen there? -- A. Yes.

550.Q. Eliminating the question of the window, the assailant bed and poured over them. You must have come through the door? -- A. Yes, there is that impression? -- A. I am of the opinion.

551.Q. There are two doors in the passage-way outside the deceased was lying towards the head of the bed. deceased's bedroom? -- A. In the passage-way altogether If those pyjamas had been dragged off the deceased on the side of the deceased's bedroom there are four doors. shortly after he was wounded they would naturally be doors.

552 MR JUSTICE GAMBLE: Six doors. There is the office, lavatory, deceased's bedroom, spare bedroom, bathroom, and dining-room.

553 MR MALCOMSON: There is a door at the back of the house toward the kitchen? -- A. Yes, that is the half door.

554.Q. The assailant may possibly have come in through that. There is another door in that passage leading into the spare bedroom. He may have got in through the window of that bedroom and through the door of that room? --

A. Right round the house is a flower garden except at the back. I looked right round and there were no footprints whatsoever.

555.Q. At the back of the house, then, is the only hard ground there would be? -- A. Practically up to the door which leads in from the kitchen there is a narrow flower bed and then there is quite a big plot of grass and then another flower garden right round to the door again.

556.Q. Taking the whole of the house there were no footprints whatsoever discovered? -- A. No, sir.

557.Q. Did you see any sign of pyjamas in the room? -- A. Yes. There were pyjama trousers lying under the foot of the bed, rolled up into a ball and saturated with blood. Of the pyjama coat no trace could be found.

558.Q. Referring to the pyjamas, there are three ways of looking at that. They may have been rolled up at first and the blood from the deceased may have been on the bed and poured over them. Did the pyjamas give you that impression? -- A. I am afraid I could not form an opinion. They were found at the foot of the bed and could have been the weapon which caused the wound. The deceased was lying towards the head of the bed.

559.Q. Was the bedroom door closed?  
570.Q. If those pyjamas had been dragged off the deceased shortly after he was wounded they would naturally have I will ask him? -- A. It was closed.

571 MR JUSTICE GAMBLE: Mr Pugh was not the first to arrive.

- been stained with blood and if they were drawn off that way they would have left smear marks on the legs of the deceased? -- A. He was covered with blood. There were no blood marks which would lead one to believe that any pyjamas had been pulled off him.
- 560.Q. Did you see any signs of footprints on the floor? -- A. No, sir.
- 561.Q. Were there any fingerprints on the door of the deceased's bedroom? -- A. I could see nothing.
- 562.Q. What sort of a lamp was in the room? -- A. It was an Aladdin lamp, sir.
- 563.Q. That is not a hanging lamp? -- A. A table lamp.
- 564.Q. Was there anything to indicate where that lamp had been standing? -- A. Nothing at all.
- 565 MR JUSTICE GAMBLE: Where was the lamp? -- A. The main body at the foot of the bed. There were bits of broken glass on the floor between the door and the window.
- 566.Q. Did you observe any oil? -- A. It had spilt out on the floor.
- 567.Q. The main portion was under the bed? -- A. Yes, at the foot of the bed, near where the pyjamas were found.
- 568 MR MALCOMSON: Was there nothing at all to indicate that that lamp had been on the table close to the window? -- A. Nothing at all.
- 569.Q. To indicate that it had been on the chair at the head of the bed? -- A. There was nothing there by which one could draw conclusions. The head of the bed was close to the wall facing the window. I made a search of the room and there was nothing in the room which could have been the weapon which caused the wound.
- 570.Q. Was the bedroom door closed? -- A. It was closed.
- 571 MR JUSTICE GAMBLE: Mr Pugh was not the first to arrive. I will ask him? -- A. It was closed.

572. MR MALCOMSON: Could you express any opinion as to how the deceased was stabbed, whether lying down in bed, or standing up? -- A. From the observation of the room I should say that the deceased was sitting on the bed. The person who stabbed him was standing over him with a short arm jab.

573. Q. Could you say out of your own personal knowledge whether it was moonlight that night? -- A. It was. The moon rose between 11-30 and midnight.

574 MR JUSTICE GAMBLE: It was about a half moon? -- A. Just off the full I believe, Sir.

575 MR MALCOMSON: Could you say if the night was clouded? -- A. I am afraid I could not say.

576. Q. With a moonlight night and no clouds and if the deceased had been awake at the time he could have seen the assailant? -- A. It is possible. I have never been in that room on a moonlight night so I cannot definitely say whether he could or not.

577. Q. Did you notice what sort of a lock was on the door of the bedroom? -- A. An ordinary mortice lock.

578. Q. Approximately what height was the deceased? -- A. 6'1" or 6' 2", sir.

579. Q. Was there anything to show that any money or other property had been stolen? -- A. I made enquiries and found that at the time of the murder the deceased had only Shs.46/- in the house which I found. I was actually listening.

580. Q. Was there any other property disturbed or stolen? -- A. No, sir. (The witness withdrew.)

581. Q. Did you examine the lamp for any dents or scratches? -- A. I did not notice any dents or scratches on it. I noticed when I found the lamp the wick was completely turned down.

582.Q. Had there been any rain the afternoon before? --  
WEDNESDAY THE 9th MAY 1935.

A. About lunch time the day previous.

583.Q. Where was the woman Fatuma while you were making your investigations? -- A. At what period?

584.Q. About the time you arrived? -- A. She was in the accused's hut.

585.Q. By whom were the investigations carried out? -- A. Parts I dealt with personally and parts were detailed to askaris.

586.Q. As to questioning any people? -- A. Actually the statements were recorded by myself.

587.Q. In speaking to the Lumbwa Kinnenge what language did you use? -- A. You mean Arap Leting? He speaks Kiswahili.

588.Q. At the time you made the tests with the door banging, the wind was rather in favour of the sound reaching you? -- A. I said the wind was across the direction of the sound; diagonally across.

MR JUSTICE GAMBLE: In a diagonal course.

MR MALCOMSON: It would not mean at right-angles, Your Honour. It would mean a certain angle on the line of the sound.

WITNESS: The wind was coming from the mountain. (Indicates on plan.)

589 MR JUSTICE GAMBLE: Slightly in favour of the sound.

MR MALCOMSON: That is what I thought, Your Honour.

590.Q. And of course you were not listening for the sound? --  
A. I was actually listening, sir.

591.Q. Did you go down to Mr Bayer's house?  
(The witness withdrew).

THE COURT ADJOURNED AT 4-10 p.m. UNTIL 9-50 a.m. on TUESDAY THE 9th MAY 1935.

597 MR JUSTICE GAMBLE: Both of you? -- A. Yes, Sir. When we got down there I found Sprague already there.

598 MR BRANIGAN: Mr Sprague is a neighbouring farmer?

A. He has a house on Bayard's farm.  
TUESDAY THE 9th MAY 1955.  
from Bayer's land above.

599. Q. Accused present inside the room.  
A. Assessors all present.  
600. Q. Council was before?  
A. Yes, sir.

CECIL EWART CADE sworn:  
That is the door which leads into the room.  
Examined by MR BRANIGAN.

591. Q. You farm on a neighbouring farm to that of the late Gerald Bayer? -- A. Yes.

592. Q. You knew him very well? -- A. Yes, sir.

593. Q. On the morning of his death, will you tell us shortly what you know about it and how you came to receive the information? -- A. I was not dressed. I was on my verandah in a dressing-gown and I saw the prisoner in company with Mr Sprague's boy running up towards my house. When they arrived the prisoner told me that Mr Bayer was dead.

594. Q. Is there anything about the manner in which he told you which you would like to inform the Court? -- A. He appeared upset. I merely noticed. It gave me such a shock that I really paid no attention. He had run some hundred yards in my sight.

595. Q. I take it the shock of the information itself was so great that you did not notice anything about the accused? -- A. I did not.

596. Q. Did you go down to Mr Bayer's house? -- A. I was next door to my brother-in-law's bedroom, Mr Cronyn. I should to him to dress as quickly as possible and

597 MR JUSTICE GAMBLE: Where was the head? -- A. The head went down to Bayer's house.

598 MR BRANIGAN: Both of you? -- A. Yes, Sir. When we got down there I found Sprague already there. then; not the first time. We did not go into the room.

599 MR BRANIGAN: Mr Sprague is a neighbouring farmer? --

A. He has a house on Bayer's farm, half a mile away from Bayer's land mine.

- 599.Q. Was Mr Sprague inside the house? -- A. No, sir. He came with me and together we went in.
- 600.Q. Through which door? -- A. The back door.
- 601.Q. Was it open? -- A. Yes, sir.
- 602.Q. That is the door which leads into the passage? -- A. Up some steps opposite the kitchen into the passage way. There is no catch on that door. It does not fasten.
- 603.Q. You walked along the passage? -- A. And we opened the bedroom door of Bayer's room.
- 604.Q. It was closed? -- A. Yes.
- 605.Q. Did you notice any marks in the passage way before going in? -- A. There was a lot of blood running from under the door into the passage.
- 606.Q. About what time was this? -- A. As near as I can say about 7 or a little before 7 in the morning.
- 607.Q. Do you mean the blood had run or was still fresh? -- A. It had run but was still fresh. In opening the door we had to avoid treading in the blood.
- 608.Q. What did you see? -- A. Mr Bayer was lying on his face, one arm down sideways and the other stretched up above his head. I think it was the left arm which was bent.
- 609.Q. Underneath his body? -- A. As if he were lying in that position. (Witness demonstrates).
- 610.Q. What part of the room was that? -- A. Beside his bed on the floor.
- 611 MR JUSTICE GAMBLE: Was the body naked or clothed? -- A. Naked.
- 611 MR JUSTICE GAMBLE: Where was the head? -- A. The head towards the door.
- 612 MR JUSTICE GAMBLE: Completely? -- A. Completely naked.
- 612 MR BRANIGAN: Did you notice the bed clothes? -- A. Not then; not the first time. We did not go into the room,

we stayed in the doorway and opened the door. We did not go into the room. We shut the door and went out to Sprague. He then went off on a horse to Segar Bastard, who has a car, to fetch the police.

613. MR JUSTICE GAMBLE: Were the first persons to enter the room the police? -- A. Yes, Sir.

614 MR BRANIGAN: Did you in fact guard the entrance? -- A. We did, sir. I stayed there for some time with my brother in law while Sprague went off to Bastard. Then I went up to speak to my wife, just to assure her, and my brother in law remained there all the time.

615 MR JUSTICE GAMBLE: You stayed on guard for awhile and then left your brother in law? -- A. Yes, Sir.

616 MR BRANIGAN: Did you notice anything else? Did you go to the kitchen? -- A. I did not go into the kitchen. In the passage way opposite the bedroom door there was a tray of morning tea, on the ground. The prisoner said he had found the body when he took the early morning tea in.

617. Q. When did he tell you that? -- A. When he first came up to the house he said he had taken in the tray and found Bayer dead.

618. Q. When you saw this tray containing the early morning tea outside the bedroom door in the passage way, did you examine what was on the tray? -- A. No, sir.

619. Q. Where was the accused all this time? Outside the house, chiefly seeing that the other boys got on with the milking.

620. Q. Just one point. Was the body naked or clothed? -- A. Naked.

621 MR JUSTICE GAMBLE: Completely? -- A. Completely naked, Sir.

69

Cross-examined by MR MALCOMSON.

- 622.Q. Was the door of the bedroom locked? -- A. No, sir.
- 623.Q. Do you know enough of the habits of the late Mr Bayer to know if he locked his door at night? -- A. I do not think he did. I have been in the morning before he was murdered - on the Sunday morning previously - he had just come back from Rumuruti. I went down to see him; he was in bed and I just walked straight into his bedroom.
- 624.Q. Had he his early morning tea at that time? - A. Yes.
- 625.Q. Is it the custom to lock one's bedroom door in that district? -- A. No, sir. Certainly not.
- 626.Q. Did you notice if the window was open? -- A. It was wide open.
- 627.Q. Would you consider that usual at that time of the year? -- A. Yes, sir.
- 628.Q. Did you notice pyjamas? -- A. Not until we came to move the body - put the body in the coffin.
- 629.Q. Did you then see pyjamas? -- A. Pyjama trousers only.
- 630 MR JUSTICE GAMBLE: Did you recognise the pyjamas? -- A. No, Sir.
- 631.Q. I asked that question because of the fact that the coat was missing. -- A. On the Sunday morning when I saw Mr Bayer I sat in the bedroom and talked to him. He was then wearing no pyjama coat at all. He was lying in bed; he had no pyjama coat on.
- 632 MR BRANIGAN: That was the previous morning? -- A. Yes, the previous morning.
- 633 MR MALCOMSON: Will you describe the condition in which those pyjama trousers were? -- A. They were screwed up in a bundle. I thought it was a piece of rag at first. They were lying in a pool of blood and they

were just a mass of blood.

634.Q. Were they screwed up in such a way as to indicate that it took some time to screw them up? -- A. They were thin material and just lying down in a pool of blood.

635.Q. Would it have taken time for anyone to have put them in the position in which they were? -- A. They were just roughly heaped up and lying in a pool of blood.

636.Q. From the appearance of the pyjamas had you any impression how they had got there? -- A. No, sir. Unless they had fallen off the bed into the blood.

637.Q. Did they give the indication of having fallen off or been thrown there? -- A. The edge of the bed was there; Mr Bayer was lying there, and the pyjamas were in this position near his feet. (Witness demonstrates).

638.Q. They might have fallen off the bed? -- A. Yes.

639.Q. When you saw the body first did it appear that the deceased had fallen out of bed? -- A. ~~Yes~~. There was too much smashed round the room. The lamp was lying on the floor broken; the chair was pushed aside as he had fallen.

640.Q. Were the indications such as to lead you to believe that the deceased had deliberately got out of bed after he had received the wound had tried to open the door. There were blood smears on the inside of the door as if he had tried to open it. The blood was down there as if his arm had scraped down the door before he had fallen.

641.Q. What was the condition of the bed? -- A. There were ~~ASSUMPTION, YES, SIR.~~ splashes of blood on it.

642.Q. Were there any indications that he had been sitting on the edge of the bed when he was attacked? -- A. No, sir.

643.Q. You did not see such a thing as an impression on the edge of the bed as if one had been sitting there? --

651.Q. Would it blow backwards and forwards in the wind? --

I did not notice that.

- 644.Q. Did the position of the bed clothes indicate anything to you? -- It appeared as if it had been slept in that night.
- 645.Q. Had the bed clothes been thrown aside? -- A. If I remember, just pushed back as if somebody had got out of bed.
- 646.Q. If the deceased had been lying in bed and had been stabbed I take it that the left arm would have been disabled and if the bed clothes had been thrown back that would have been by the right hand? -- A. From the amount of blood about the room, if the deceased had been stabbed while in bed I should imagine there would have been a lot on the wall and in the bed.
- 647.Q. Did you come to the conclusion then that he had been stabbed while standing? -- A. The conclusion I came to was if he had been stabbed with a spear he would have been sitting on the bed. To get the point of the spear above Mr Bayer's shoulder the head of the spear would have hit the ceiling.
- 648.Q. It was not a high room? -- A. No, sir. My personal conclusion was that it was most likely he was sitting on the side of the bed.
- 649.Q. It would be a reasonable assumption in your opinion that he had been surprised by a noise in the house and had turned to get out of bed and had been attacked in that position? -- A. That is quite a reasonable assumption, yes, sir.
- 650.MR JUSTICE GAMBIE: You say the door by the kitchen is never fastened? -- A. I have never seen it fastened. It is rather tight-fitting and the usual position of the door is half open and half shut.
- 651.Q. Would it blow backwards and forwards in the wind? --



A. I don't think so. It fits too tightly.

652.Q. Did you know the accused previously to the morning you came up? -- A. I had been to Mr Bayer's many times Sir.

653.Q. Do you know what the relations were between Bayer and the accused? -- A. The only thing I know is that Mr Bayer had often said to me that the accused had been taking his cigarettes etc, and I had myself remarked to him more than once that if he knew he was a thief why keep him. He sort of laughed and said "I get along well with him".

654.Q. They appeared to be good friends? -- They appeared to be.

MR MALCOMSON (to His Honour): May I ask another question?

MR JUSTICE GAMBLE: If it arises out of what I have asked.

I have not made a note of the alleged thefts because it is not evidence.

MR MALCOMSON: I will leave it at that, Your Honour.

(The witness withdrew).

S Y D N E Y W I L L I A M S P R A G U E sworn:

Examined by MR BRANIGAN.

655.Q. You live in a house on the farm of the late Mr Gerald Bayer? --

MR JUSTICE GAMBLE: Has Mr Cade gone? Just call him. There is one question I want to ask.

CECIL EWART CADE (on former oath).

656 MR JUSTICE GAMBLE: There is one point I want to clear up. You say your brother-in-law went off to Mr Bastard to ask him to go in his car to fetch the police. Has not the deceased a motor-car? Why was it necessary to send to Segar Bastard to get a car when you had one on the farm? -- A. I had never thought of that point.

Neither my brother in law nor I had a car at all.

Our work is all done on horseback. Sprague had a horse in the stable and I never thought of the deceased's car.

MR JUSTICE GAMBLE: I only asked that question to verify the fact that the deceased had a car.

(The witness withdrew).

SYDNEY WILLIAM SPRAGUE (re-called).

657 MR BRANIGAN: Your house is situated on the farm of Mr Bayer?

-- A. That is right.

658.Q. And on the 19th December, the morning Mr Bayer died, will you tell us who informed you of the death? -->

A. My houseboy informed me that the accused was outside and that he said .....

659.Q. You cannot say that. As a result did you go outside and did you see the accused? -- A. I saw the accused in my sitting-room.

660.Q. Did you return with the accused to the farm of Mr Bayer? -- A. No. I sent the accused to Mr Gade to inform him and ask him to come immediately.

661.Q. Did you notice the state of mind in which the accused was? -- A. He was very agitated.

662.Q. Anything else with regard to his manner? -- A. To me he seemed very distressed and upset that his master was dead; in fact I thought that he was crying at the time.

663.Q. Can you tell us whether that distress was real or simulated? -- A. I have not a great experience of the African Native but I should have thought it was real. It was very real.

664.Q. Did you go to Mr Bayer's house? -- A. Yes.

665.Q. At what time did you arrive there? -- A. About ten to seven, I think.

- 666.Q. Were you the first to arrive? -- A. I was the first to arrive, very shortly followed by Mr Cade.
- 667.Q. You went into the house with Mr Cade? -- A. Yes. I went straight in with Cade following me.
- 668.Q. Did you go into the room where the deceased was? -- A. I opened the door and just looked in.
- 669.Q. And you saw Mr Bayer lying dead? -- A. Yes.
- 670.Q. In what part of the room was he lying? -- A. He was lying with his head on the door side. He was lying on his face and was naked.
- 671.Q. Was there much blood? -- A. A great deal of blood.
- 672.Q. In the passage way outside Mr Bayer's bedroom did you notice anything? -- A. I noticed what I took to be ~~like~~ blood stains.
- 673.Q. Anything else? -- A. In the passage way there was a tray containing a pot of tea, teacup and saucer, sugar basin and milk jug. There was no sugar in the basin so far as I remember.
- 674.Q. Was there a spoon? -- A. I cannot remember distinctly. There was no milk.
- 675.Q. There was a milk jug? -- A. Yes, but no milk in it.
- 676.Q. Anything else? -- A. I fancy there was a plate with two little scones on it.
- 677.Q. Did you remember whether there was any butter? Did you see any? -- A. I don't think there was. I cannot be certain. I cannot remember whether there was or was not. I remember the plate and I remember scones, but I cannot remember butter.
- 678.Q. Was the tea in the teapot hot or cold? -- A. I don't know. ~~It was warm.~~ I remember bending down to feel it.
- 679.Q. Where was that tray? -- A. It was in the passage. Half way between the dining-room and the bedroom, on the dining-room side.

680.Q. Would that be the far side? The side furthest away from the half door leading from the kitchen? -- A. It would be on the opposite side of the wall to the bedroom. It was the dining-room side.

681.Q. Was that position of the tray past the bedroom door coming from the kitchen?

MR JUSTICE GAMBLE: If you will refer to the plan you will see it was not. The dining-room is immediately on your right as you go in; on the left the office, lavatory, and then the deceased's bedroom.

682 MR BRANIGAN (to witness): Point it out on the sketch plan.

-- A. It was just about there, on the kitchen door side. (Witness indicates position).

683.Q. Did you see if anyone entered the bedroom while you were there? -- A. I went straight up to my stable and saddled a horse and rode to Mr Bastard's place.

684.Q. To fetch the police? -- A. To ask him to fetch the police and a doctor.

Cross-examined by MR MALCOMSON.

685.Q. Was that tray close to blood or was it well clear from any blood in the passage? -- A. I should say it would be clear by about 4 to 6 feet. It was well the kitchen door side.

686.Q. The Attorney General has asked you if there was bread and butter, tea and sugar and the rest complete on this tray. Did you attach any significance to the fact that some things were missing? -- A. I thought it was a little peculiar at the time. I merely looked at the tray and noticed those things. I was rather upset and I sort of gazed at it, otherwise I should not have taken much notice.

MR MALCOMSON: ... I merely looked at the tray and noticed those things. I was rather upset and I sort of gazed at it, otherwise I should not have taken much notice.

MR JUSTICE GAMBLE: ... I should not have taken much notice.

"Man Friday" because he was ...

- 687.Q. You did so rather as a relief from what you had just seen? -- A. Yes. It was not actually that. One looked everywhere to see if there was anything one noticed immediately.
- 688.Q. It would be quite possible for the toto attached to the kitchen to have disposed of butter, sugar and milk or anything on that tray? -- A. Yes, it would be possible.
- 689.Q. It was not so close to the blood that he would be afraid to go near? -- A. It was well up the passage and the blood would be very obvious to him.
- 690.Q. What relationship had the deceased to Native labour? -- A. He was very bad.
- 691.Q. He was not liked by the Native population? A. No, he was not popular. In fact, only about a fortnight previously one of my Natives had come and said what a bad man he was; and once while Bayer was at my house he was inclined to go for Mr Bayer, this particular Native.
- 692 MR JUSTICE GAMBLE: When Bayer was with you this boy tried to "go for" Bayer? -- A. Yes. I think the accused was there at the time.
- 693.Q. Why did your Native want to go for the deceased? -- A. Mr Bayer did very aggravating things. For instance he would take the hut doors from the boys and take them ~~in~~ down to his shambe and say they had stolen them. He would go right "off the deep end" for nothing at all. He was very excitable.
- 694 MR MALCOMSON: Do you know if the deceased and the accused had any quarrel at any time? -- A. I have not known them to have any quarrel.
- 695 MR JUSTICE GAMBLE: Were they good friends? -- A. I should say very good friends. We had christened the accused "Man Friday" because he was always with Mr Bayer.

- 696.Q. You had christened him "Man Friday"? -- A. Yes, they were inseparable.
- 697.MR MALCOMSON: What was the name of your Native who wanted to scrap with Mr Bayer? -- A. I cannot remember.
- 698 MR JUSTICE GAMBLE: How long ago was that? -- A. It is about three months I should say. I mean he was merely incidental. There were many Natives. He was not nearly as fierce towards Bayer as other Natives.
- 699.MR MALCOMSON: You don't remember the name of your boy? -- A. I think that probably the accused would know the name.
- 700.Q. Could you say what tribe he belonged to? -- A. Kikuyu. He was only a temporary boy with me - working for only a few days.

(The witness withdrew).

I V A N D E N N I S C R O N Y N sworn:

Examined by MR BRANIGAN.

- 701.Q. You are a brother-in-law of Mr Jade? -- A. Yes.
- 702.Q. You live with him? -- A. Yes.
- 703.Q. You remember the morning when Bayer died? -- A. Yes.
- 704.Q. Did the accused come to your house? -- A. Yes.
- 705.Q. At what time? -- A. Approximately 7 a.m.
- 706.Q. Did you see him? -- A. Yes, sir.
- 707.Q. Did you have a conversation with him with regard to Mr Bayer's death? -- A. Yes.
- 708.Q. What did the accused say? -- A. He first of all said Mr Bayer was dead and that he had brought the tea in that morning and walked up the passage towards the bedroom door and noticed blood coming from beneath the door and that he looked in the door and had seen Mr Bayer lying as he thought dead in the room. He

708.Q. thereupon came up to tell us. He had already told Sprague and the deceased? A. The deceased was there.

709.Q. Did you notice what state the accused was in at that time? -- A. He appeared to be distressed.

710.Q. You went down to Mr Bayer's house? -- A. Yes.

711.Q. Did you notice anything in the passage-way?

MR JUSTICE GAMBLE: I think we have had enough of that, Mr Branigan.

712 MR BRANIGAN: I want to know if he knows the habits of Mr Bayer. -- A. I noticed a small amount of blood in the passage.

713.Q. Besides blood, did you notice a tray? -- A. I just noticed there was a tray.

714.Q. Do you know anything about Bayer's habits, whether he takes sugar and milk in his tea? -- A. I can definitely say he took it if it was there and if there was no milk and sugar he would drink plain tea. He certainly used to drink plain coffee if he was sold. I also know that if the sugar basin was empty he used to get the keys and tell the houseboy to get some more from the store.

715.Q. Have you ever from your own knowledge known Mr Bayer to drink tea without sugar and milk? -- A. I cannot

716.Q. really swear to any occasion, but I have a certain feeling that he would drink plain tea.

717.Q. Was that body identified to you by Mr Pugh of the police? -- A. Mr Pugh

Cross-examined by MR MALCOMSON.

718.Q. What reputation had Mr Bayer with regard to his relationship to Natives? -- A. I think some negroes

719.Q. definitely disliked him and others thought him slightly mad.

720.Q. Would you say he was popular or unpopular with the Natives? -- A. Taken on the whole I would say unpopular.

- 718.Q. Do you know anything of the relationship between the accused and the deceased? — A. The accused always struck me as the one negro whom the deceased was fond of. There was only one other negro I have known him to be fond of, and that is another negro outside.
719. MR JUSTICE GAMBLE: How did the accused strike you as to his feeling towards the deceased? — A. He appeared to me to look after the deceased's interests.
720. MR MALCOLMSON: Are you of the opinion then that the accused re-animated the feeling of the deceased? — A. As far as I could judge.
- 721.Q. What was the name of this other Native whom Mr Bayer liked? — A. Githuki.
- 722.Q. Did you notice any of his effects, or any of his clothing, absolutely covered with blood. Shirt, trousers and one bedsheet. (The witness withdrew.)
- 723.Q. Did you form any opinion as to how the pyjama trousers became so soaked with blood? — A. Only when the gentleman was wounded a lot of blood came out and
- WILLYAT SHAH sworn.  
Examined by MR BRANIGAN.
- 722.Q. You are Sub-Assistant <sup>Surgeon</sup> ~~Surgeon~~ in Charge of Nyeri Civil Hospital? — A. Yes.
- 723.Q. On the 19th December did you go with the Assistant Superintendent of Police to the farm of Mr Bayer? — A. Yes.
- 724.Q. Did you find the body of an European male adult there? — A. In one of the rooms of the house.
- 725.Q. Was that body identified to you by Mr Pugh of the Police? — A. Mr Pugh and Mr Higgins.
- 726.Q. As the body of Mr Bayer? — A. Yes.
- 727.Q. Did you carry out a post-mortem on the body? — A. Yes.
- 728.Q. Will you tell us the result? — A. The body was lying on the floor on its face.
729. MR JUSTICE GAMBLE: Is this the post-mortem? — A. This is the external examination, Sir. The face was turned to

the right. There were no other wounds on the body, or marks, except one stab wound in front of the left

737.Q.

Did you come to any conclusion as to how the deceased deep. The direction of the wound was downwards and was attacked from the position of the body and the backwards. I dissected the axillary and half of the room generally? -- A. I think this. There was an arm and found that the axillary blood vessels and door here and the bed like this. I think some of these nerves were nearly severed. Then I dissected up to into the room and this gentleman got up and then he the bone and found that there was no injury deeper stabbed him here. Perhaps that man closed the door than 5 1/2 inches. There was a good deal of haemorrhage and he was standing by the door like this. There were on the floor and on the body. Half of the floor was a lot of streams of blood and he tried to open the door and he could not.

750.Q. Did you notice any blood-stained pyjama trousers? --

MR JUSTICE GAMBLE: What position was the accused in when A. Yes, there were some pyjama trousers on the floor he received the wound? -- A. Between sitting and absolutely covered with blood. Shirt and shorts and lying, Sir.  
one bedsheet.

751.Q. MR MALCOMSON: Did it appear to you that he had been aroused

Did you form any opinion as to how the pyjama trousers by the noise of the assailant coming in and swung out became so soaked with blood? -- A. Only when the of bed to be in a position for him - whoever entered? gentleman was wounded a lot of blood came out and -- A. Someone might have entered. . . . everything was disturbed. How they got there I don't

MR JUSTICE GAMBLE: That is mere supposition, Mr Malcomson. know. He was absolutely naked.

752.Q. MR MALCOMSON: There is a possibility of an impression on

As the result of the post-mortem examination, what the side of the bed which might lead one to that belief. was the cause of death? -- A. Haemorrhage from the

MR JUSTICE GAMBLE: An impression on the side of the bed axillary blood vessels.

753.Q. How soon after the infliction of the wound did death but not that he swung out of bed to meet his assailant. supervene? -- A. About 5 minutes. It was a very

754.Q. Was there a mark as if the deceased had sat on the edge of the bed? -- A. I do not know, Sir.

754.Q. At what time did you examine the deceased? -- At about

MR MALCOMSON: Did you try this spear (Ex. 6) or some spear 11-50.

755.Q. How long do you think the deceased had been dead? -- that weapon and it fitted exactly into the wound. A. From 6 to 8 hours.

MR JUSTICE GAMBLE: That is a very dangerous practice, 756.Q. Could that wound have been caused by a stab with a Mr Branigan.

MR BRANIGAN: Very dangerous indeed, Your Honour; and I don't -- A. I could have been caused with this weapon or see the great use myself.

742 MR MALCOMSON: similar to this.

wound? Cross-examined by MR MALCOMSON.

743.Q. Did you try any other steps in the room?

757.Q. Did you come to any conclusion as to how the deceased was attacked from the position of the body and the room generally? -- A. I think this. There was a door here and the bed like this. I think someone came into the room and this gentleman got up and then he stabbed him here. Perhaps that man closed the door and he was standing by the door like this. There were a lot of streams of blood and he tried to open the door and he could not.

758 MR JUSTICE GAMBLE: What position was the accused in when he received the wound? -- A. Between sitting and lying, Sir.

759 MR MALCOMSON: Did it appear to you that he had been aroused by the noise of the assailant coming in and swung out of bed to be in a position for him - whoever entered?

-- A. Someone might have entered.....

MR JUSTICE GAMBLE: That is pure supposition, Mr Malcomson.

MR MALCOMSON: There is a possibility of a depression on the side of the bed which might lead one to that belief.

MR JUSTICE GAMBLE: An impression on the side of the bed might support the theory that he had been sitting there but not that he swung out of bed to meet his assailant.

740.Q. Was there a mark as if the deceased had sat on the edge of the bed? -- A. I do not know, Sir.

741 MR MALCOMSON: Did you try this spear (Ex. 6) or some spear over and the bedclothes disturbed in that wound? -- A. Yes, Dr Deig and I. We tried that weapon and it fitted exactly into the wound.

MR JUSTICE GAMBLE: That is a very dangerous practice, Mr Branigan.

MR BRANIGAN: Very dangerous indeed, Your Honour; and I don't see the great use myself.

742 MR MALCOMSON: Did you try any other spear than this in the wound? -- A. No.

743.Q. Did you try any other weapon in that wound? -- A. No.

744.Q. Was the wound right through to the shoulder blade? -- No. It had not gone through the shoulder blade. It was just near the shoulder blade; it was not right through.

745 MR JUSTICE GAMBLE: Had it reached the shoulder blade? A. Yes.

746 MR MALCOMSON: At the time that you fitted this spear to the wound was there any difference in the size of the wound than when that wound had been caused? When the wound was caused, immediately afterwards there would be a great loss of blood. Would the loss of blood increase the size of the wound?

747 MR JUSTICE GAMBLE: Was the wound the same size ~~xx~~ when you saw it as when inflicted? -- A. It was the same size.

748 MR MALCOMSON: Did the dissection which you made cause the wound to be increased in size? After you had examined the deceased you made certain dissections of the body? A. Yes.

749.Q. Did that increase the size of the wound? -- A. No, I did not cut the wound. I cut through the axilla to see how the wound went. I did not interfere with the wound at all.

750.Q. Were there any signs of a struggle in the room? -- A. I think there was, because the lamp was knocked over and the bedclothes disturbed. The globe was broken and there was a magazine lying on the floor.

751.Q. Were there any other wounds on the body of the deceased other than the shoulder wound? --

A. No. That one, a fall on the outside of the door also. There were blood marks here and on the outside also.

- 752.Q. Had the deceased the magazine under his arm? -- A. No. Not under his arm; it was lying on the floor.
- 753.Q. Did you make any examination of the accused? -- A. Yes, afterwards. He had a small wound on his lip and one on the leg, and there was still blood oozing.
- 754.Q. You have seen the exhibits of clothing? -- A. Yes.
- 755.Q. Would those scratches on the accused have been sufficient to account for the blood on the clothing? -- A. Yes, I think so.
- 756.Q. What would happen on the weapon being withdrawn from the wound? -- A. There would be a gush of blood.
- 757.Q. How would that affect the assailant if he had withdrawn the weapon from the wound? -- He would be covered with blood absolutely.
- 758.Q. You saw the marks of blood in the passage? -- A. Yes.
- 759.Q. How would you account for the blood in the passage? -- A. That was my first question to Mr Pugh when I entered the house. He said "I was in the room and coming out and going in....."

MR JUSTICE GAMBLE: We have it in evidence from witnesses who were there before Mr Pugh that blood had run under the door.

WITNESS: There were blood marks along the passage. Of course there were blood marks on the floor.

- 760 MR JUSTICE GAMBLE: What sort of blood marks? -- A. Mr Pugh was inside and then he came out.
- 761.Q. Of feet? Carried out by feet? -- A. Yes, Sir.
- 762 MR MALCOLMSON: Did you see any blood on the walls of the passage or on the door? -- A. Yes, I saw on the inside and outside. I saw blood here (witness indicates on door of Courtroom). When first he was attacked the blood fell on the outside of the door also. There were blood marks here and on the outside also.

That is why I think perhaps when the man came in he opened the door and afterwards when he had wounded him he closed the door.

763 MR JUSTICE GAMBLE: The first gush of blood would be on the outside of the door and when the door was shut on the inside? -- A. Yes, Sir.

764 MR MALCOMSON: Did it appear to you that the blood which was on the outside of the door came directly from the deceased? -- A. Yes, from the deceased's wound. There were spurts.

765.Q. Could the blood on the outside of the door not have been caused by the assailant in closing the door.

MR JUSTICE GAMBLE: The witness says it was spurts, Mr Malcomson. You must leave it at that.

766 MR MALCOMSON: Is it possible to come to any conclusion as to the height of the assailant from the wound? Would it be necessary for the man to be a tall man? -- A. I don't think it would be necessary to be very tall.

767.Q. Would it be necessary for the assailant to be a strong man? -- A. Yes.

768.Q. What was the height of that room, the ceiling of the room? -- A. I did not measure, but it was just like this. (Witness indicates ceiling of Courtroom).

769 MR JUSTICE GAMBLE: What would that be? 10 feet? -- A. Yes, Sir.

770 MR MALCOMSON: Would it be possible for a woman to cause this wound? -- A. I don't think so.

771.Q. Would it be possible for an older man - a man no longer young - to cause this wound? -- A. No, except if he was a very strong man

772.Q. If the deceased had been moving in the direction of the spear or weapon when he was struck would it not require less force to inflict the wound? -- A. He had been

moving it could not have been in the position it was.  
773 MR JUSTICE GAMBLE: The wound was incompatible with the deceased's moving forward? -- A. Yes.

Re-examined by MR BRANIGAN.

774.Q. You said in answer to a question of Mr Malcomson that the stains on the clothes could have been caused by the scratch or abrasion on the accused's lip and shin. I want you to examine the stains on this kenzu (Ex. 3 handed to witness). Do they resemble fingerprints - smears from fingerprints? -- A. Yes, they do.

775.Q. I want you to tell the Court how you think it is possible from an abrasion on the upper lip and on the shin to cause blood stains on the kenzu from the four fingers? -- A. Perhaps wiping.

776.Q. Do you think it is possible for a man who has an abrasion under his nostril on his upper lip - ~~that~~ that he will wipe it with his two or three fingers at the same time? -- A. With two, I think. It would be like this. (Witness demonstrates).

777.Q. And do you think that that abrasion on the upper lip would have been sufficient to have caused those stains? -- A. Yes, sir.

778.Q. Would you be able to tell us in your opinion whether or not from the amount of stains that are on the kanzu it was used directly to staunch the wound? -- A. I think the fingers, and then they were wiped on the kanzu.

779.Q. You will see from the kanzu that there are a large number of separate stains spread over various parts of the kanzu. One on the back, three down the left side; there is another rather big stain on the collar up at the neck; there are stains down the front. Do you  
MR MALCOMSON: From the evidence given...  
WITNESS: Downwards and backwards.

think it is likely that a man would hold the kanzu in his hand and attempt to staunch the abrasion on his lip with his fingers and keep wiping his fingers? --

A. Yes, I think so.

780.Q. One other question. I think you said that on withdrawing the spear from the deceased the assailant would have been covered with blood?

781 MR JUSTICE GAMBLE: The witness said when the spear was withdrawn there would be a gush of blood.

WITNESS: And the assailant would be covered with blood.

782 MR BRANIGAN: Now does not that presuppose that the assailant was standing directly in front of the deceased for him to be covered with blood at the moment of withdrawing the spear. (Learned Crown Counsel demonstrates), For me to be covered with blood (I am the assailant) it is necessary for me to stand here in front? -- A. Yes.

785.Q. If I am standing slightly to the left at the moment of withdrawing the spear and withdrew like that there would be no reason why I should be covered with blood? -- A. No.

784.Q. That is by standing slightly to the left? -- A. Yes.

MR MALCOMSON: If Your Honour pleases, I have a question on the re-examination.....

MR JUSTICE GAMBLE: I am afraid I cannot allow it.

MR MALCOMSON: It is in relation to the last question of the house? A. Yes, we have the Attorney General.

MR JUSTICE GAMBLE: Re-examination refers to matters which have been touched on in cross-examination. If you like to put the question to the Court I will see if I can put it.

MR MALCOMSON: From the evidence given by the witness the sound was inwards and downwards .....

WITNESS: Downwards and backwards.

MR MALCOMSON: And I assume from that that the assailant was standing directly in front.

785 MR JUSTICE GAMBLE: Could the assailant have inflicted that wound if he had been standing on the side? -- A. No.

MR BRANIGAN: My question was with regard to withdrawing the spear not to inflicting the wound.

THE COURT ADJOURNED AT 11-5 a.m. FOR 10 MINUTES

S A I WA S H U K A (PAGAN) affirmed:

Examined by MR BRANIGAN.

- 786.Q. Are you the father of Fatuma the first witness? --  
A. Yes.
- 787.Q. Do you live in Nyeri? -- A. Yes.
- 788.Q. Your daughter Fatuma is living on Mr Bayer's farm? --  
A. Yes.
- 789.Q. Is she living ~~the~~ with the accused Zakayo? -- A. Yes.
- 790.Q. On the day preceding Mr Bayer's death did you go to Mr Bayer's farm? -- A. On Sunday I went to Mr Bayer's farm.
- 791.Q. Did you see Zakayo and your daughter there? -- A. Yes, I found them there.
- 792.Q. While you were sitting in their hut that evening about 7 o'clock did you hear Mr Bayer's motor-car arrive at the house? -- A. Yes, we heard the motor-car arriving.
- 793.Q. About what time was that? -- A. I don't know the time.
- 794.Q. Had the sun set? -- A. After sunset.
- 795.Q. Did Zakayo leave the hut and go up towards the house on the arrival of the motor-car? -- A. Yes. To his master's house.
- 796.Q. Did you and Fatuma follow up towards the house afterwards? -- A. I went with Fatuma to ask the accused

where I was to sleep.

797.Q. For about how long was the accused inside talking to Mr Bayer? -- A. We stood outside the house.

798.Q. Was it a short time or long? -- A. It was a short time. Then he came back.

799.Q. Did he return to the house with you and Fatuma? --

817.Q. A. No. We left him there and I and Fatuma went back to the hut.

800.Q. Did the accused follow you back to the hut? -- A. After we had stayed there for some time the accused came.

801.Q. Was Karioki in the hut at that time? -- A. Karioki was inside.

802.Q. Karioki is the toto who works on the farm? -- A. Yes.

803.Q. After some little time did the accused leave the hut again? -- A. He went out with the toto Karioki.

804.Q. Did he say where he was going? -- A. He did not tell us.

805.Q. Was he away for some time? -- A. Yes.

806.Q. Did he return to the hut again? -- A. He returned afterwards.

807.Q. Did Karioki come back with him? -- A. Yes.

808.Q. After that did all of you leave the hut except Zakayo and Fatuma? -- A. I went to sleep with Karioki.

809.Q. Who remained behind in Zakayo's hut? -- A. We left Zakayo and Fatuma in the hut.

810.Q. How many people slept in the hut in which you slept? -- A. Three persons.

811.Q. Who were they? -- A. Karioki, Muremi and myself.

812.Q. Is Muremi also a toto who works in Mr Bayer's house? -- A. Yes.

813.Q. What time did you wake up in the morning? -- A. 7 o'clock.

814.Q. Was anyone in the house with you at the time you woke up? -- A. Muremi and Karioki had gone. Muremi went

828.Q. What is your religion? -- A. I have no religion.

to ring the bell.

- 815.Q. Where did Karioki go? -- A. Karioki went to Fatuma's hut.
- 816.Q. Then what happened after that? -- A. I came outside. I stood on the footpath and I saw Zakayo going towards the bwana's house.
- 817.Q. What bwana? -- A. Another person - not Bwana Bayer. I don't know the name.
- 818.Q. Did you say anything to him or did he say anything to you? -- A. No, I didn't speak to him nor he to me.
- 819.Q. Was he walking quickly or running or just walking at an ordinary pace? -- A. He was walking at an ordinary pace and carrying a stick on his shoulder.
- 820.Q. Is that yours? (Stick, Ex. A handed to witness). --  
-- A. Yes.
- 821.Q. That is a stick with a spike attached to the end of it. Did you arrive on the farm with that on the Sunday? --  
Yes.
- 822.Q. After you saw Zakayo going towards the house of the other European did you have a conversation with Fatuma?  
-- A. Fatuma came to the place where I was standing and she spoke to me.
- 823.Q. As a result of what she said did you leave the farm? --  
A. I left the farm.
- 824.Q. Did you throw that stick away?  
MR JUSTICE GAMBLE: That is leading.
- 825.Q. What happened to the stick? -- A. I hid it in a bush in the presence of Fatuma and Karioki.
- 826.Q. And did you go back to Nyeri? -- A. I returned to Nyeri.
- 827.Q. Is that evidence? ~~Cross-examined by MR MALCOMSON~~
- 827.Q. What tribe do you belong to? -- A. I am an Nyanwezi.
- 828.Q. What is your religion? -- A. I have no religion.

- 829.Q. What is the religion of Fatuma? -- A. Mohamedan.
- 830.Q. How long has she been a Mohamedan? -- A. About three years ago she was converted to Mohamedanism.
- 831.Q. Are you Fatuma's father, her real father? -- A. I brought her up.
- 832.Q. She is not your child? -- A. No.
- 833 MR MALCOMSON: Are you any relation to Fatuma?  
MR JUSTICE GAMBLE: Do you mean blood relation?
- 834 MR MALCOMSON: Are you any blood relation to Fatuma? --  
A. I am taking her as my adopted daughter. Her mother came to live with me.
- MR JUSTICE GAMBLE: I don't want to curb your cross-examination but I cannot quite see the relationship of this old man to Fatuma and the offence which occurred at Narra Moru.
- MR MALCOMSON: We have got Fatuma's statement, Your Honour.
- MR JUSTICE GAMBLE: Either that is wrong or this witness is not speaking the truth.
- 835.MR MALCOMSON: When you and Fatuma went to the house of the European did Fatuma go inside? -- A. Fatuma did not enter the master's house.
- 836.Q. Did you swear in the lower Court that Zakayo and Fatuma went in to speak to the bwana? -- A. I started with Fatuma to go back to the house. She left me before we got to the house and she went back to Mr Bayer's house.
- 837.Q. I have asked the witness if he swore in the lower Court that Fatuma and Zakayo went into the house of the European. I want to know whether he gave that evidence or not? -- A. Yes, I did.
- 838.Q. Is that evidence true? -- A. Yes, it was true.
- 839.Q. Did Fatuma remain in the house of the European for half an hour? -- A. Yes, and after half an hour she

left. She came out after half an hour.

840.Q. What is your occupation? -- A. I used to work on the quarry here.

841.Q. How long is it since you left work? -- A. I worked on the stone quarry for one year.

842.Q. You have not worked for one year past? -- A. I had got a bad arm and I could not work.

843.Q. What did you go to the farm for? -- A. My child was there and I went to ask for money for taxes.

844.Q. What taxes did you want? -- A. For a plot.

845.Q. Was it a hut tax or some other tax?

MR JUSTICE GAMBLE: Do you think it matters, Mr Malcomson?

WITNESS: The rent I have to pay for a plot.

846 MR MALCOMSON: Did you ask Fatuma for any money? -- A. I did and she said she had not got money.

847 MR JUSTICE GAMBLE: How much did you ask for? -- A. 12/-, and she said she has not got money.

848 MR MALCOMSON: Did you ask Zakayo for money? -- A. I asked Fatuma and Fatuma asked Zakayo for money.

849.Q. Did you not ask Zakayo yourself? -- A. I did not speak to him.

850.Q. Did you swear in the lower Court that you asked Zakayo for money? -- A. When I went to ask money from Fatuma, Fatuma was to ask money from Zakayo. That is why I said that.

851.Q. How much money did you ask Zakayo for? -- A. 12/- only

852.Q. Did you not ask Zakayo for 30/-? -- A. No, I did not ask 30/-.

853.Q. Did you not swear in the lower Court that you had asked Zakayo for 30/-? -- A. Yes, but not from Zakayo direct but through Fatuma. I asked Fatuma and Fatuma asked Zakayo to get money.

MR JUSTICE GAMBLE: My own opinion of this witness, Mr

Mr Malcomson, is that he is a rather stupid old man. His evidence is getting us nowhere. His evidence is not incriminating the accused or anybody else, unless the suggestion is that this witness committed the crime himself. My point is, whether you believe him or do not he does not help the Crown or yourself. He has made obvious mistakes in the lower Court and here which he cheerfully admits.

854 MR MALCOMSON: What time did you go to the hut with Karioki and Muremi to sleep? -- A. 8 o'clock.

855.Q. Was there a good light at that time? -- A. It was dark.

856.Q. Did you go out of the hut during the night? -- A. I went out to make water and I returned.

857.Q. What time was that? -- A. The moon had risen this time.

858.Q. Before it was up in the heavens? -- A. It was down and there were some clouds.

859.Q. Was the light fairly good? -- A. The moon was just rising and it was not quite light. It was a little dark.

860.Q. How long were you out of the hut? -- A. I just made water and I returned immediately inside.

861.Q. Did anyone see you leaving the hut? -- A. Karioki saw me.

862.Q. Did anyone see you returning? -- A. Yes. The same toto Karioki.

863.Q. How do you know Karioki was awake on your return?

MR JUSTICE GAMBLE: He was only out 30 seconds. If he was awake when he went out he was awake when he came back.

864.MR MALCOMSON: How many Natives were in Zakayo's hut that evening at food time? -- A. Karioki was there, Muremi another toto, myself and Zakayo and Fatuma. No others.

865.Q. When you went out during the night did you hear any sound? -- A. No.

866.Q. You have said that you woke at 7 o'clock in the morning?

Yes Bayer was found dead? -- A. I remember that.

867.Q. And that no-one else was in the hut when you awoke? --

879.Q. And yes, I was alone when I woke up.

868.Q. How do you know where the totos had gone and what they

880.Q. were doing? Zaka. A. The totos were given instructions

881.Q. on the previous evening what to do. Muremi was told

882.Q. to ring the bell. What time was that? -- A. I have not got

869 MR JUSTICE GAMBLE: Who instructed them? -- A. Zaka.

883.Q. And Karioki was to go to his house in the morning.

870 MR MALCOLMSON: When you saw Zaka in the morning carrying a spear? --

885 MR JUSTICE GAMBLE: He did not say he saw him carrying a spear. He carried a stick.

MR MALCOLMSON: That is all, Your Honour.

886.Q. Did Zaka (Evidence read over to witness. Correct.)

soon. (The witness withdrew).

887.Q. After some time I came back -- A. Yes, he returned.

888.Q. Did he get anything when he returned? -- A. No, he had nothing. KARIOKI WA MUGWERU affirmed.  
Examined by MR BRANIGAN.

871.Q. MR JUSTICE GAMBLE: Do you understand Kiswahili? -- A. No.

MR JUSTICE GAMBLE: What was his language was his evidence

890.Q. recorded in in the lower Court? -- A. It remained in Zaka's

MR BRANIGAN: Swahili.

891.Q. MR JUSTICE GAMBLE: We will try in Swahili.

872 MR BRANIGAN: What tribe are you? -- A. Kikuyu.

875.Q. You work as shamba boy on Mr Bayer's farm? -- A. Yes, in my own hut.

874.Q. And after that the accused Zaka? -- A. Yes.

875.Q. Did you eat with Zaka? -- A. We ate together.

876.Q. And you shared a hut with Muremi? -- A. Yes.

877.Q. You remember the Sunday preceding the morning when

894.Q. Mr Bayer was found dead? -- A. I don't remember Sunday.

878.Q. Do you remember the day preceding the morning when to

Mr. Bayer was found dead? -- A. I remember that morning. went with him?

895.Q.

879.Q. And you remember the previous evening when Fatuma's father came to the farm? -- A. Yes.

880.Q.

Were you in Zakayo's hut in the evening? -- A. Yes.

881.Q.

Did you hear Mr Bayer's motor-car arrive? -- A. Yes.

882.Q.

Do you know what time that was? -- A. I have not got a watch and I can't tell the time.

883.Q.

Was it dark? -- A. It was dark.

885.Q.

884.Q. When the car arrived did Zakayo leave the hut? --

884.Q.

A. He left.

885.Q.

And after he had left did Fatuma and her father leave also, after some time? -- A. Fatuma and her father remained there in the house and I was there with them.

886.Q.

Did Zakayo return? -- A. He did not come back very soon.

887.Q.

After some time did he return? -- A. Yes, he returned.

888.Q.

Did he eat anything when he returned? -- A. No, He had nothing.

889.Q.

What did he do? -- A. He went back to cook some food for the European.

890.Q.

Did you go back with him? -- A. I remained in Zakayo's house. I did not go with him.

891.Q.

Did Fatuma and her father leave the hut of Zakayo? --

892.Q.

A. While I was there they did not go out, but I went out leaving them in the hut. I went to light the fire in my own hut.

893.Q.

And after that? -- A. After lighting the fire in my own hut I returned to Zakayo's hut. I found Fatuma and her father.

894.Q.

And after that? -- A. Zakayo arrived at that time.

894.Q.

When Zakayo returned what happened? -- A. He told me to go with him to the Lumbwa huts as he had a message to

- 895.Q. the Lumbwa from the European.
- 896.Q. And you went with him? -- A. I went with him. He told him to go and look for the missing calf on the following morning.
- 897.Q. How many Lumbwa were there? -- A. I saw two.
- 898.Q. What were their names? -- A. I know one of them, Kipsoi.
- 899.Q. Do you know the other's name? -- A. I don't know his name. He is outside the Court.

MR BRANIGAN: Tell Arap Leting to stand in the Court.

- 900.Q. When Zakayo had talked about the calf, did he make any request to the Lumbwa? -- A. He asked the Lumbwa to lend him their spear and the Lumbwa asked him what was there, and he said he was afraid, and they asked him whether there were hyenas or elephants or lions that he was afraid of. Then he said it was dark and he was afraid.
- (A man, Arap Leting, enters the Court),
- 901.Q. Is that the other Lumbwa? -- A. Yes, he is the owner of the spear.
- 902.Q. Come to the window here and point out the distance that Zakayo's hut is from the Lumbwa huts? -- A. Where those donkeys are on the footpath just across the field.
- (Witness indicates).
- 903 MR JUSTICE GAMBLE: How far is that?

MR BRANIGAN: About 160 yards.

MR MALCOMSON: I should say 200, Your Honour. About that.

- 904 MR BRANIGAN: And was it in walking that distance back to the hut that Zakayo wanted the use of the spear to protect him? -- A. Yes.
- 905.Q. Did Arap Leting give him the spear? -- A. Yes, the man who was there, European is not awake.
- 906.Q. Did you return to the hut? -- A.

- 905.Q. Would you be able to recognise the spear? -- A. No, I cannot recognise it because it was night-time.
- 906.Q. Did you return with Zakayo to his hut? -- A. I returned with him to his hut. I stood near the door inside and Zakayo was out following me. He stuck the spear outside his hut with his left hand when he came in.
- 907.Q. Then did you go to bed? -- A. I took my meal. I left with Fatuma's father and Muremi. We all went to our hut and lay down. Before we slept Fatuma's father went outside to make water. We lay down and we slept. In the morning Fatuma's father left first.....
- 908.Q. I don't want him to go so quickly as that. Who got up first in the morning? -- A. Muremi. He was working as kitchen boy.
- 909.Q. Who got up next? -- A. Fatuma's father next. He went out and I followed him out.
- 910.Q. When you went outside where did you go? -- A. I went to Zakayo's house. This was nearly sunrise.
- 911.Q. Who was in Zakayo's hut when you went there? -- A. I found Zakayo. He was inside the door of his house; it was open.
- 912.Q. Was Fatuma inside? -- A. She also was there.
- 913.Q. Was Zakayo wearing any clothes? -- A. Yes.
- 914.Q. What was he wearing? -- A. Short trousers and shirt.
- 915.Q. Did you have any conversation with Zakayo? What did Zakayo say to you or you to Zakayo? -- A. When I got in I asked Zakayo to take me to the European to get 3/- to go to buy a cloth because I was feeling rather cold during the night. We started together. We went to a distance from here to this tree outside the Court (about 20 yards). He ordered me back and abused me saying "Kana nayo, the European is not awake by this time".
- 916.Q. Did you return to the hut? -- A. I went and stood of

near the door of his house.

917.Q. Where did Zakayo go? -- A. Towards the European's house.

918.Q. At this time where was Muremi? -- A. He was in the kitchen.

919 MR JUSTICE GAMBLE: What kitchen? -- A. He was warming himself in Zakayo's hut.

920 MR BRANIGAN: At the time that Zakayo was going towards Mr Bayer's house (Now think hard first!) when you saw Zakayo going towards the European's house, at that time where was Muremi.

MR JUSTICE GAMBLE: I thought he said Muremi was warming himself at the kitchen fire?

921 MR BRANIGAN: And then he said the hut. (To witness) Where was he? -- A. Muremi was there.

922.Q. Where? -- A. At Zakayo's.

923.Q. Was anything said about firewood at this time or was it later? -- A. While I was standing near the door of Zakayo's house Zakayo came from the direction of the European's house. At that time he was carrying a spear which he was taking to the Lumbwa. I don't know where he got the spear from.

924.Q. When you say you did not know where he got the spear do you mean that morning? -- A. In the morning I don't know where he got it from.

925.Q. Did you see the spear outside the hut that morning? -- A. No. It was not outside the hut in the morning. I saw him coming from the direction of the European's house with the spear.

926.Q. Where do you say he was taking the spear? -- A. To Lumbwa.

927.Q. Was anything said about getting firewood at this time? -- A. He went away and he came back with one piece of

firewood and we put it on the fire.

928 MR JUSTICE GAMBLE: Went away where? -- A. He went away with a spear towards the Lumbwa huts. He came back with one piece of firewood. This time I was standing by the fire warming myself.

929 MR BRANIGAN: When he came back what was said next? -- A. He asked me to go off to my work. I told him that the cattle had not arrived yet. The cattle arrived and then I went to milk. While I was milking Kitsigwa arrived.

930.Q. What I want to know is - when you were warming yourself and when Zakayo returned with the firewood did he say anything beside what you have told us? -- A. He said nothing more to us.

931.Q. Did he say anything about Mr Bayer? -- A. No, I did not hear him say anything about the European and up to that time I did not know that the European was dead.

932.Q. When did you first know the European was dead?-- A. When the police officer came then I knew the European was dead. I was given a letter by an European called "Gitaigwa".

MR JUSTICE GAMBLE: Do you want this down, Mr Branigan?

MR BRANIGAN: No, Sir.

Cross-examined by MR MALCOMSON.

933.Q. On the Sunday evening were there any strange Natives in Zakayo's hut? -- A. I saw no strangers.

934.Q. How many people were in the hut at that time?

MR JUSTICE GAMBLE: He told us that in chief.

935 MR MALCOMSON: Very well, Your Honour. (To witness): When you went to the Lumbwa huts that evening were there any strange Lumbwa there in the huts? -- A. No.

936.Q. What time did Sai go out of the hut that evening? --

A. We thought it was 9-30m when we went to sleep.

- 937 MR JUSTICE GAMBLE: The question was: What time did Sai go outside? -- A. It is difficult to tell the time. I have no watch and I cannot tell the time. I think it was 9-30 because we had just gone in and before we slept he went out.
- 938 MR MALCOMSON: How long was Sai outside? -- A. A short time. He made water and returned.
- 939.Q. Were you awake when he returned?-- A. I saw him coming in.
- 940.Q. Did you swear in the lower Court that you did not see him return? -- A., I don't remember.
- 941.Q. Has Fatuma any other name than Fatuma? -- A. Fatuma is Njeri.
- 942.Q. Is her father a Kikuyu? -- A. No, an Nyamwezi.
- 943.Q. Are you any relation of Fatuma? -- A. No.
- 944.Q. Is Sai the real father of Fatuma? -- A. I don't know.
- 945 .Q. When Zakayo went up to the house of the European on the morning of the murder did you and Fatuma look through a hole in the door after him? -- A. No.
- 946.Q. Did you see Fatuma looking through a hole in the door of the hut? -- A. No.
- 947.Q. When you saw Zakayo carrying the spear was he carrying it openly? -- A. He was not hiding it. I could see it from a distance.
- 948.Q. Were there any strange Natives on the farm of the European the day before the European died? -- A. No.
- 949 MR JUSTICE GAMBLE: Why did you go with the accused to the Lumbwa huts? -- A. He asked me to accompany him there as he had a message for Lumbwa from the European.
- 950.Q. Why should he want you to go with him? -- A. I don't know the reason.
- 951.Q. Was he afraid? -- A. He said he was afraid to go alone and he had a message to the Lumbwa from the

European.

- 952.Q. Did he say what he was afraid of? -- A. No, he did not say what he was afraid of, but he was drunk.
- 953.Q. Are there any hyaenas around there? -- A. I have not heard a hyaena crying.
- 954.Q. Was there in fact a calf lost? -- A. I cannot tell because I was not doing herding work. I was cultivating the shamba.
- 955.Q. You said the first you knew of the European's death was when the police arrived? -- A. Yes.
- 956.Q. In the lower Court you said "I was nearby when Fatuma told her father to move his stick in case he was accused of killing Mr Bayer"? -- A. It was not me. I don't remember saying it: I remember what I said.
- 957.Q. You don't remember saying in the lower Court that Fatuma told her father to move the stick? But the Magistrate could not have made that up? -- A. I am quite certain I did not say that to the D.C.

MR JUSTICE GAMBLE: It was read over to you and signed as correct.

(Evidence read over to witness. Correct.)

(The witness withdrew).

K I M N E N G E ARAP L E T I N G affirmed:

(Lumbwa Interpreter PISHI BIN KIBABA sworn)

Examined by MR BRANIGAN.

- 958.Q. Do you work as a herd for the late Mr Bayer? -- Yes.
- 959.Q. ~~Do you~~ Do you share a hut on the farm with another Lumbwa called Kipsoi? -- A. Yes, sir.
- 960.Q. Do you remember the night before Mr Bayer died, or do you remember the night he died? -- A. Yes, it was a Sunday night.
- 961.Q. That night did Zakayo come to your hut? -- A. He came on a message from the bwana to say all should go to

look for the missing calf the following morning.

- 962 MR JUSTICE GAMBLE: Was there a missing calf? -- A. Yes, a small calf was missing.
963. MR BRANIGAN: Who arrived with him? Did he come alone? --  
A. There was a toto, Karioki.
964. Q. When Zakayo had asked about the calf did he make any request to you? -- A. He asked me to lend him my spear.
965. Q. What did you say to that? -- A. "What do you want the spear for?" "Give to me and I will return it on the morning".
966. Q. Anything else? -- A. I gave him and he went away.
967. Q. Would you be able to recognise the spear now? -- A. I can recognise it. (Spear, Ex. 6 handed to witness). That is my spear.
968. Q. Do you know whether Zakayo has walked to his hut from your hut at night without a spear previous to this in the dark? -- A. He has not previously come and I have not seen there for many days.
969. Q. During the time that you were there have you ever seen any hyenas or wild animals round about your hut on the pathway to Zakayo's hut? -- A. I have not seen anything.
970. Q. What condition was the spear in when you gave it to Zakayo that night? Was it dirty or clean? -- A. It was clean and some oil had been applied to it.
971. Q. What was the oil on it for? -- A. To keep the rust off when it get wet.
972. Q. On the following morning what time did you go out to take the cattle into the boma? -- A. Before sunrise.
- 973 MR JUSTICE GAMBLE: You took the cattle out? -- A. To lead the cattle from one boma to another for milking purposes.

964. MR. JUSTICE GAMBLE: look for the missing calf the following morning.

962. MR. JUSTICE GAMBLE: Was there a missing calf? -- A. Yes, a small calf was missing.

963. MR. BRANIGAN: Who arrived with him? Did he come alone? -- A. There was a toto, Karioki.

964. Q. When Zakayo had asked about the calf did he make any request to you? -- A. He asked me to lend him my spear.

965. Q. What did you say to that? -- A. "What do you want the spear for?" "Give to me and I will return it in the morning".

966. Q. Anything else? -- A. I gave him and he went away.

967. Q. Would you be able to recognise the spear now? -- A. I can recognise it. (Spear, Ex. 6 handed to witness). That is my spear.

968. Q. Do you know whether Zakayo has walked to his hut from you hut at night without a spear previous to this in the dark? -- A. He has not previously come and I have not seen there for many days.

969. Q. During the time that you were there have you ever seen any hyenas or wild animals round about your hut on the pathway to Zakayo's hut? -- A. I have not seen anything.

970. Q. What condition was the spear in when you gave it to Zakayo that night? Was it dirty or clean? -- A. It was clean and some oil had been applied to it.

971. Q. What was the oil on it for? -- A. To keep the rust off when it get wet.

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973. MR. JUSTICE GAMBLE: You took the cattle out? -- A. To lead the cattle from one boma to another for milking purposes.

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