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the petition... a somewhat
sent to the police...
and suggesting that if the law
had been done, country might consider
his... ^{either for} ~~proceeding~~ ^{the} ~~process~~
W. B., know that the view is
taken of his action

J. H. Allen
9/12/29

P. S. A
10/12/29
re: P. H. B. on

I would leave Mr. Walter Powell
alone. He has not to good a
standing as an educationalist, &
I am not anxious that the Govt.
should get a sideways dip with him.
Senior - he was probably egged on
by his wife -

W. B. 12.12.29

As proposed

P. H. B.
at once

12.12.29.

A copy of the
officials.
~~the~~ any others
are included
among the
negotiations

cc put by

KENYA.

No. 690



3
H
GOVERNMENT HOUSE,
NAIROBI,
KENYA

9^{1/2} November, 1929.

COLONIAL OFFICE

My Lord,

(No 2) With reference to Your Lordship's despatch No. 618 dated the 13th August, 1929, relative to the murder of Mr. Ernest Kenyon in the Thomson's Falls district I have the honour to forward for Your Lordship's information copies of the marginally noted papers from which Your Lordship will observe that two Kikuyu natives, Mugo Katigwa and Ngari Weru, have been sentenced to death for the murder which appears to have been perpetrated under peculiarly brutal circumstances.

- (1) Copy of the record of the Court of the Resident Commissioner, Mumuruti, (Criminal Case No. 202 of 1929)
- (2) Copy record of the trial before the Supreme Court sittings at Nakuru (Criminal Case No. 98 of 1929)
- (3) Judgment and sentence.
- (4) Transcript of shorthand notes taken by the official reporter of the trial.

No appeal against the conviction was lodged and I have, with the advice of my Executive Council confirmed the sentence passed.

2. I enclose copies of a petition received from certain residents of the Laikipia district and of a letter from the Honorary Secretary of the Laikipia Farmers' Association and have to inform Your Lordship that concurring with the unanimous advice of my Executive Council I have refused to entertain the requests for a public execution and for a fine to be imposed upon the

THE RIGHT HONOURABLE LORD PASSFIELD, P.C.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W.1

KENYA.

No. 690



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H
GOVERNMENT HOUSE,
NAIROBI,
KENYA

9th November, 1929.

COLLEGE

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2.

upon the village of the murderers.

- 3. Two other suggestions were made to me,
 - (a) that the property of the murderer should be sequestrated as compensation to Mr. Kenyon's family for the loss of his life and
 - (b) that certain selected kikuyu representatives be permitted to view the bodies of the natives after the execution had been carried out.

I have declined to accede to the former proposal as, apart from there being no authority for the adoption of such a course, I am advised and agree that the fact that the murdered man's dependants have a right of action in respect of his death does not justify Government in presupposing that they will take, and succeed in, such action, and stepping in to conserve the estates of the murderers for the benefit of those dependants.

I have also decided against agreeing to this second proposal but have issued instructions that all district officers in the kikuyu reserve are to be sent copies of the inquest reports upon the executed men and are to inform the Local Native Councils that the law has taken its course; furthermore I have instructed them to report if any indications reach them suggesting that there is doubt among the kikuyu as to the sentence being carried out.

- 4. I am glad to be able to report that the

3.

circumstances of the case are exceptional and regarded with the same horror by all responsible natives as by the European population.

I have the honour to be,

My Lord,

Your Lordship's most obedient,
humble servant,

Edward Gigg

GOVERNOR.

COLONY AND PROTECTORATE OF KENYA.

In the Resident Commissioner's Court

at Mombasa.

Supreme Court Substantive Case No. 61/20.

CRIMINAL CASE No. 202 of 1922.

Prosecutor

Graham Sharp, Police.

Accused

1. M.H. 'A' M.H. 240722, Mombasa, Native;
2. M.H. 240722, Mombasa, Native.

Date of Issue

20th July 1922.

Date of Hearing

22 - 23 & 24 July 1922.

Charge

Section 20 of the Penal Code.

Judgment

Guilty for trial before the Supreme Court.

Criminal No. 24.

COLONY AND PROTECTORATE OF KENYA.

In the Assistant Commissioner's Court

at Mombasa.

Supreme Court Criminal Case No. 24/22.

CRIMINAL CASE No. 202 of 1922.

Prosecutor

Chief Insp. Police.

Accused

1. MR. 'A' M., 247522, Mombasa Harbour,
2. MR. 247522, Mombasa Harbour.

Date of Issue 22nd July 1922.

Date of Hearing 22 - 23 & 24 July 1922.

Charge Murder, Section 299 I.P.C.

Judgment

Commenced New trial before the Supreme Court.

IN HIS MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI.

94
Criminal Case No. 222 of 1929.

--
Hex v. I. Mago wa Katigwa and another.
--

LIST OF WITNESSES FOR PROSECUTION:-

1. Mrs. Dorothy Maud Campbell Meiklejohn.
2. Ernest Brown.
3. Albert Ash.
4. Robert Alan Cunningham.
5. Frederick Phillip Booth.
6. Kabaika Kimain.
7. Kimimia wa Ndereoti.
8. Njuki wa Kirema.
9. No. 654. Cpl. Owen Oshiang.
10. No. 415. 3rd Grade Const. Kihlangat arap Tapkokwa.
11. Bombessi Ole Maraga.
12. Nangarabe wa Kamiti.
13. Ngara wa Tamiti
14. Njeroge wa Kiarie.
15. Waithiri wa Kehagi.
16. Kaman wa Githaija.
17. Kithaka wa Kamau.
18. Ouma arap Cheserkan.
19. Ukanji Roush.

FOR DEFENCE

Hil.

LIST OF EXHIBITS IN KUMUHUTI CRIMINAL

Case No. 202 of 1929.

--

- | | | |
|---------|-----|------------------------------------|
| Exhibit | 1 | Native sword. |
| | 2. | " " |
| | 3. | Petrol of Kerosene Oil tin. |
| | 4. | Diets Lamp. |
| | 5. | Cigarette case. |
| | 6. | Medical Report. |
| | 7. | 3 One Shilling pieces. |
| | 8. | Kodak film tin. |
| | 9. | Box of matches. |
| | 10. | Sketch plan of scene of death. |
| | 11. | Native club. |
| | 12. | Scabbard and belt of Native sword. |
| | 13. | " " " " " " |
| | 14. | Khaki safari shirt. |
| | 15. | Khaki Shorts. |
| | 16. | Enamel Bowl. |
| | 17. | Part of a wooden box. |

Exhibits 6 and 10 are on the case file.

Brown Kanju, photographs and khaki shorts of Ngari not yet returned from Nairobi.

--

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Case No. 202 of 1929.

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15. Khaki Shorts.
16. Enamel Bowl.
17. Part of a wooden box.

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Brown Kanja, photographs and khaki shorts

Ngari not yet returned from Nairobi.

24.7.29.

Crown through Police

Versus

1. RWL. A. NKU. 2407732 Mago Katigua.

NKU 2409024 Ngari Wera.

Accused present.

Ash for prosecution.

MRS. DOROTHY MAUD CAMMELL MEIKLEJOHN British sworn:-

I am a doctor and live at Marago in Laikipia District. I know accused No. 1 Mago, he was formerly my house boy. I think about nine months ago. He worked for me a short time, may be three months. About 11.30 on the 9th of this month I received a report from Mr. E. Evans, that a Native had found the dead body of Mr. Kenyon in a gully and asking me to go to see him. I went at once to the place guided by Mr. Evans' boy. I went across country to a place I think on Mr. Evans' farm where the body was. I arrived there about a quarter to twelve. There I found the body of Mr. Kenyon. He was quite dead - warm - "rigor mortis" had started. I did not touch anything as he was already dead, but waited until the Police arrived.

2. Col. Cunningham arrived with Inspector Ash about three o'clock in the afternoon then with Col. Cunningham I examined the body. The shirt and undervest were soaked in blood the ^{limbs} limbs were extended except from the left arm, which was lying across his face. There were four large horizontal wounds across the front of the head and face. The top one had penetrated the brain and almost severed the skull in two. Further wounds - one horizontal wound about three inches long at the back of the head going through the skin and for a short distance into the bone. One wound about 1½ inch long in front of the neck. One wound about 1½ inch on the left side about three inches from the nipple this had

penetrated the lung. There were two wounds on the back of the left forearm extending to the bone and a wound on this arm just above the elbow extending to the bone; a wound on the middle finger of the right hand aligning the first phalanx in two and cutting a portion of the knuckle.

Two wounds on the right forearm fracturing both bones above the wrist and almost covering the hand from the arm - a deep wound about three inches long at the back of the right knee, a shallow wound on the front of the left knee and a wound about three inches long and going to the bone on the front of the left shin, a deep wound going to the bone on the front of the right shin - two small wounds on the right calf and a small contusion below the wrist on the right ilium.

The wounds were caused by some sharp cutting instruments, weapons such as the Native swords produced Exhibits 1 and 2 could cause these wounds.

The amount of violence used could in my opinion bend those swords as they are now.

(Both swords are bent (Sgd) C.H. Adams.).

The edges could also have been notched by the violence used on the skull. The wound penetrating the lung and the one in the neck could have been caused by a stab or thrust from the swords produced.

The abrasion below the ilium could have been caused by the body having been dragged.

Later on same day I examined a wound on the right foot of the accused No. 1 Mago - I did this because I was asked to do so by Inspector Ash. I examined thoroughly the wound shown in Court now by accused 1. It would have been caused by a cutting instrument.

It could not have been cut by such a thing as the edge

of the tin produced Exhibit 3, not in my opinion, a Native sword could have done it. The cut was a clear incised cut, and not such as could be produced by a jagged edge. It was quite a fresh cut. I should say a few hours old. It was an incised wound 3 inches long on the outer side of the dorsum of the right foot parallel to the base of the toes, and about half an inch deep.

I should say that deceased had been dead roughly twelve hours when I first saw him.

Read over correct.

(Sgd) G. H. Adams.

No. XXN. by either accused.

(Sgd) G. H. Adams.

HERBERT EVANS British sworn:-

I am a farmer in Laikipia - I do not know either of the accused. I knew the late Mr. Kenyon. He lived about a mile from my house. He was a farmer. His farm adjoins mine. I last saw Mr. Kenyon alive at 10 p.m. on Monday night the 8th of this month. He left my place at 10 o'clock at night. He had arrived at my farm about seven. I came in about seven and found him at my house. He had called in. He had dinner with me. He was very cheerful while at my house, talking about general subjects. He did not say anything in particular about his employees, except that he had had trouble about theft of milk by one of his house-boys. It had been quite recent. He said he was chasing a mouse in his store and the mouse got behind a box and he found about a quart of milk hidden behind the box. He had accused the boy of taking it and said he would cut him a month's wages. I don't remember any other incidental account - he said a boy had pointed a knife at him threatening him when he had accused the boy of something. He did not mention having been warned. When he left about 10 p.m. it had been raining.

but had cleared up - it was fairly dark. He had no stick or weapon. He borrowed a lamp from me. I recognize the lamp produced Exhibit 4 - it is soldered up the side - it is the one Mr. Kenyon took. It was not damaged at the top when he took it as it is now. He said Good Night to me in front of the house and I saw his light go right down into the Ravine. The ravine is about half to $\frac{2}{3}$ mile from my house and about some distance from his house - about half a mile.

I know a Native called Kiminia - he is one of my employees, about 11 o'clock the following morning he came up and made a report about Mr. Kenyon to me. I at once left with several boys, and Kiminia went as guide to us. He took us to Kenyon's body. The body was nearby in the bottom of the ravine. I recognized the body at once. He was lying on his back. I saw no signs of struggle first there - but marks as of the body being dragged.

6.

I followed the marks where he had been dragged - he had been dragged back towards my place - about a hundred yards. I put a boy on guard and covered the body with a sheet and left it. I sent a messenger to his house to inquire if any of his employees knew anything about him and I sent a note to Mr. Maklejohn and got my own car and came straight into Rumuruti and reported the matter to the Police. I recognize Exhibit 5 - Kenyon's cigarette case. He had it with him when he was at my house on the Monday night.

I see at the place where the dragging commenced signs of blood ^{and bone} which looked like pieces of skull and brains

Read over correct.

(Sgd) C. H. Adams.

No XIX. by either accused.

(Sgd) C. H. Adams.

Case adjourned and accused remanded to Wednesday the

the 24th at 10 - O'clock

Sd. G.H. Adams.

24-7-39 Reported - refused present

Adm.
for prosecution.

Sd. G.H. Adams

Albert Add - English - sworn:-

I am inspector in charge Police Rukuruti, at about 12-30 p.m. on the 9th instant Mr. E. Evans at Rukuruti made a report to me and in consequence I proceeded at about 12.45 p.m. with Col. Cunningham to a gallery on Mr. Evans's farm in the Oil Leekah area about 24 miles from Rukuruti. Where a body which I recognized as that of Mr. Kenyon was pointed out to us by a native Kikinda. The body was covered with a tarpauline sheet. After the sheet had been removed Mr. Niddi Jehn came about 12.15 p.m. and together with the two doctors Col. Cunningham and Dr. Niddi Jehn I examined the corpse. I put in as Ex. VI the original report made on the spot by the two doctors. I instructed ^{some} Const. Owen to empty the pockets of the deceased. There were found on him three 1/- pieces, a Kodak film tin Ex. VII and Ex. VIII a box of matches (ship brand) Ex. IX and the cigarette case Ex. V which had three Kamitas cigarettes in it.

I put in Ex. I a sketch plan of the whole scene. I sent two or three men to search the vicinity and about 10 minutes later Constable Kiblangat called me to a place about 60 yards from the body where he pointed out the club produced ~~Ex. X~~ marked (4) on the Ex. I. About ten yards from the club and alongside the pathway leading from Mr. Evans's house to deceased's house were two patches of coagulated blood (No. 3 on Ex. I) Between the blood and the club about one yard from the blood was a faint impression of the toes of a native foot (No. 3 on the Ex. I) and a small sketch inset also shows it) the toes were pointing towards ^{the} blood. On the other side of the blood there were marks on a

on a small embankment as if two or three persons had been sitting there (No. 6 on Ex. I). ^{From} ~~Where~~ what I saw I gathered the impression that this was where the attack ^{there} began. I returned to the deceased and followed the marks made in the grass caused apparently by dragging the corpse to the place where it was found. The distance the body appeared to have been dragged is shown in red ink in Ex. I, points 7 - 8 and is about 100 yards. At point 9 was a patch of coagulated blood and what appeared to be a piece of human skull and alongside marks in the earth made by thrusting of sharp instruments therein. From there I proceeded to accused's homestead - a distance of about half a mile. There near the kitchen I saw accused No. 1 Naga - accused No. 1 Naga is known as "Kiarie". I asked him accused No. 1 where is Kiarie. He said "I am Kiarie" I noticed that there was a clean piece of cotton wool on his right foot and asked him "what has happened to your foot"? He said "I cut it with a tin in the piggery yesterday at about 4 p.m. I directed him to take off the cotton wool and show me the wound which appeared to me to be a clean incised one - as the lips of the wound were clearly cut and had no jagged edge.

I therefore called up Mrs Cunningham and Maklitchan and asked them to inspect ^{accused's} feet. They arrived soon towards about 2.50 p.m. and examined accused Kiarie's feet. They were present when Kiarie accused No. 1 voluntarily illustrated how he had cut his feet with the tin. The tin Ex.III is the one he said he had cut his foot with. I detained accused ^{and} I when I had sent for the two Doctors. He was very nervous and trembling and was rather pale. As a result of further information received I arrested accused No. 2 Ngari, At about three p.m. and a native called Njuki - about 15 minutes later I released Njuki.

About 2.50 p.m. a native named Othman arap Uhaserheit

and belt of a Native sword Ex.XII. They were wet with fluid and. A few minutes later Mr. Booth handed me Exhibit 1 together with its sheath and belt Ex.XIII. The sheath has since been ripped up for examination by the Bacteriologist. At about 4.45 p.m. I found Ex.XIV a khaki safari shirt and khaki shorts Ex.XV in the accused's kitchen. They were wet and were hanging up presumably on a line. About 7.15 a.m. the following morning Wednesday the 10th instant my Asst. Chuma brought to me Ex.XI which was wet with fluid. At about 7.55 a.m. Chuma brought me a pair of khaki shorts. These are at present with the bacteriologist.

About 8 a.m. I took possession of brown kumwa which accused 1 was wearing. It had what appeared to be blood on the right sleeve. This kumwa is also with the bacteriologist. About 11 a.m. Chuma brought to me the lamp Ex.4.

During the morning of the 10th instant I was present when Mr. Underwood took photographs relating to the case acting under my directions. These photographs have not yet been received from the printer. I left the scene at about 12.45 p.m. with both the accused and handed them over to the Supdt. Prisons Mombasa about 2.30 p.m. the same day.

He is, by either accused.

R. O. C.
Sd. C.H. Adams.

Sd. G. H. Adams.

Robert Alan Cunningham - British - sworn:-

I am a retired Colonel in the R.A.M.S. I do not know either of the accused. On the 9th instant I accompanied Inspector Ash to Mr. Kenyon's farm. I arrived there about 2 o'clock. I was there about the body of Mr. E.C. Kenyon and met Dr. Mwikileh there. Dr. Mwikileh and I examined the body of Kenyon. I found the limbs extended except for the left arm which was bent over the face "Rigor Mortis" had set in. The wounds were very numerous. There were 4 -----

Large horizontal wounds across the front of the head and face. One the top ones penetrating to the brain had almost covered the skull into two. One horizontal wound about three inches long on the back of the head going through the skin and for a short distance into the brain. One wound about one inch long in front of the neck - one wound about 1 1/2 inches long on the left side of the back of the neck and about three inches from it. This wound penetrated the lung. Two wounds on the back of the left forearm extending to the bone and wounds on the back of the arm just above the elbow extending to the bone. A wound on the middle finger of the right hand apparently made when the position closed striking the first phalanx in two and cutting a piece of the ~~bone~~ ^{bone}. Two wounds on the right forearm fracturing both bones of the wrist and almost covering the ^{hand} ~~head~~ from the arm. A deep wound about three inches long at the back of the right knee. A shallow wound in front of the left knee. A wound about three inches long and going to the bone in front of the left shin. A deep wound going to the bone in front of the right shin. Two small wounds in the right calf. A small ~~contusion~~ ^{Contusion below} ~~below~~ the crest of the right ilium. The wounds appeared to have been caused by a cutting instrument such as a large knife, sword or "panga". Great violence must have been used. The body was well nourished and vigorous 5' 10" height. A distinguishing mark which I noticed was an old scar just above the right knee. Apparent cause of death was the wounds on the head. In my opinion death had occurred about ten or eleven O'clock p.m. on the previous night. In my opinion Exhibits 1 and 2 could have caused the wounds I saw, and the violence caused might have been the sword Exhibits 1 and 2, and caused the matches on Exhibit 3. I was asked by Inspector Ash to inspect Accused 1's feet. The wound I

now is the one exhibited in Court the right foot of accused 1. The wound would have been caused by a sharp cutting instrument such as knife or sword - such as Exhibit 1 and 2. I remember Exhibit 3, the tin - it could not have caused the cut on accused 1's foot. The accused showed us how he said he had cut his foot by the tin falling onto his foot in the pigsty. In my opinion the cut could not have been caused in that manner. Accused 1's wound was an incised wound on the outer half of the dorsum of the right foot. The wound was about two inches long and about a quarter of an inch wide and quarter of an inch deep. It was a clean wound with no ragged edges.

Read over correct.

(Sgd) C. H. Adams.

No. ~~111~~ by either accused.

(Sgd) C. H. Adams.

FREDERIC PHILLIP BOOTH - British sworn:-

I am a settler in Laikipia. I have seen the accused on Mr. Kenyon's farm. Accused 1 was a houseboy. Accused 2 I think was a driver. The late Mr. Ernest Cunliffe Kenyon was my cousin. I think he was thirty four years of age. He came out to Kenya as an Assistant to me about three or four years ago. He bought his present farm about two years ago. Farm No. L.O. 4577. This farm adjoins Mr. Ernest Evans' farm. He was capable and hardworking - he had not had much experience but was gaining very well. He worked his labour well from a farming point of view. He was not popular with some labour because he worked hard himself and expected them to do the same. I last saw him alive on the Sunday before he was killed - the 7th instant. I had lunch with him. He was well and quite cheerful and spoke about future

intended development on the same. I left him at about three o'clock in the afternoon.

14. I saw accused 1 at the house on Sunday - he served lunch. There was nothing unusual about his appearance or behaviour.

I recognise Exhibit II - a club. It was kept in Kenyon's house and used to strike the gang. The sword Exhibit I and the sheath Exhibit XIII were hung on a wall in the house crossed. No 10 on Exhibit I is where the club hung, and No. 11 where the sword was hung. The sword Exhibit I was dusty through hanging on the wall.

I heard of Kenyon's death while I was at Mr. Dyker's house on Tuesday the 9th and went straight to Kenyon's house arriving about 3.30. I left my wife at my own house on the way. When I got to Kenyon's house I noticed that the sword Exhibit I was not in its place on the wall. I reported its absence to Mr. Ash and then asked accused 1 Kiarie where it was. Kiarie said that Kenyon had taken it off the wall and shown it to the herdeman and told him he would give it him if he herded well. He said that Kenyon had placed the sword behind some shelves of petrol boxes in his Office. Position No. 12 on Exhibit I. I called accused - both were there - into the Office and we moved the petrol boxes and found the sword Exhibit I behind it. The sword was greasy and had been recently cleaned, the sheath was clean. It was not dusty as usual - it had been obviously wiped over. I think I pointed out to the accused and Mr. Ash that it had been recently cleaned. The accused did not make any comments. Kenyon was collecting these trophies and it was unlikely that he would give one away to a Native. I handed Exhibit I and Exhibit XIII - sword and

sheath to the Police. The club Exhibit XI. I saw with Mr. Ash on Tuesday the 9th. I identified it as having been in deceased sitting room.

I recognise Exhibit V - it is the case Kenyon carried his cigarettes and cherots in.

Read over correct.

(Sgd) C. H. Adams.

No. XII. by either accused.

(Sgd) C. H. Adams.

KABAIKO KIMAIN - Kikuyu boy aged about 9 or 10 affirmed:-

I live on Mr. Evans' farm. I know accused S. Ngari. I have heard his name. I know Mr. Kenyon. I went one day to cut some grass for basket work - I saw Mr. Kenyon lying in the grass - it was about eleven o'clock in the morning. I don't know whether he was dead. It was on Mr. Evans' farm. I ran away and told Kimimia - Kimimia went to tell Mr. Evans.

Read over correct.

(Sgd) C. H. Adams.

No. XIII. by either accused.

(Sgd) C. H. Adams.

KIMIMIA WA NDERATI - Kikuyu affirmed:-

I am a driver for Mr. Evans. I live on Mr. Evans' farm. I don't know the accused. I know the previous witness Kabaike he lives on Mr. Evans' farm. One day - in the morning he brought me a report about eleven o'clock. I went with the boy and saw someone - a body - lying down. I stood a few feet away. I did not recognise the body. I went straight to Mr. Evans and told him and then returned again to the body with Mr. Evans and showed him the body. I remained there by the body until Inspector Ash of the Police arrived.

Read over correct.

(Sgd) C. H. Adams.

12.

No. 12. by either accused.

(Sgd) G. H. Adams.

NGUKI WA KIROMA - Kikuyu affirmed:-

I was cattle herdsman for Mr. Kenyon. I had worked for him one month and three days when he was killed. I know accused 1 Kiarie because I lived in the same hut - he was cook and boy to Mr. Kenyon.

I know Ngari accused 2, because he and I once worked on same farm and when I got to Kenyon's I found him there. He is a driver at Kenyon's and lived in the same hut as I did. Six of us shared a hut. There were one Masai; Nguru; Wangombe; Ngari (accused 2); Kiarie (accused 1); and I myself. I remember one day I had a quarrel with Mr. Kenyon. It was three days before Kenyon died. It was on a Friday. It was about 6 O'clock in the morning - in my hut. He came from his house to our hut and said to me get up and go and milk the cows. I was lying down - I got up slowly - Kenyon came in and boxed my ears. I drew my knife, a Native sword Exhibit 2. Exhibit 12 is the sheath. At that time Exhibit 2 was in good order straight and not matched.

Kenyon did not hit me again - he seized my wrist - I meant to strike Mr. Kenyon because he hit me for nothing, but was afraid to do so, so put my sword down. Then Kenyon called me to go out and milk the cows. I went to milk until about 8 a.m. I brought the milk to the dairy about 8 a.m. and gave it to Kiarie and then I went to herd the cattle which I did till about four p.m.

Then I met the two accused in Mr. Kenyon's kitchen. I chatted with them - with Kiarie. Kiarie said "What did the master hit you for this morning" I said "He hit me because I was at fault he had called for me for a long time". He said "The master will hurt us". I did not say

day regular but went to my hut. This was on Friday. Saturday morning I milked again and about eight a.m. took the milk to the dairy - where I found Kenyon and accused 1 Kiarie. We did not converse. Then I milked the cattle again until the evening. On Sunday morning I took the milk to the dairy as usual did not see either Kenyon or Kiarie. On Sunday about four p.m. I met Kiarie accused 1 and Ngari accused 2 at the kitchen. Kiarie said that Kenyon had eat his wages - one month wages 16/- because he had hidden some milk. I said "Why did you hide milk where the master would see it?" He said I hid it in a box and the master found it". We did not say anything more just then. But at six O'clock I saw them again at the kitchen. Kiarie was cooking and Ngari was there with him. I went back to my house as I had nothing to do at the kitchen.

On Monday I took the milk to the master about 8 a.m. I saw Kiarie. I did not converse with him. About four p.m. same day I came back again to the house. I met Kiarie accused 1 by himself Ngari was not there then. He came about five O'clock. We three Kiarie accused 1, Ngari accused 2 and I were there at the kitchen no one else was there with us. About 5 o'clock Kenyon had gone to Mr. Evans. Kiarie had told me that Kenyon wanted to go over to Evans and he said that Kenyon would have dinner at Evans'. Ngari accused 2 was there. Kiarie said now the master has gone to Evans' if you agree it will be a good thing if we kill Kenyon. Ngari accused 2 was there in the kitchen. I was just outside the kitchen. I said "It will not do for us to do this, we shall be caught by the Government and get into trouble". Kiarie said if you talk like that "We shall quarrel because Evans Kenyon has given me a lot of work to do. I wash the things and cook but my work is that of a

14.

"boy". I said If we do this the British Askari of Police will come and the Government will make a search for us everywhere - we shall be caught.

He said "It will not be found out". He said "If you won't do it I will see Ngari, because this master of mine gives me a lot of work". Ngari was inside the kitchen and could hear. Kiarie and I were just outside the door. Ngari said "I will bring my coat I will try and see what we can do about this".

20.

I then went back to my hut. I left both accused at the kitchen. Ngari had not got his coat then. At that time my sword Exhibit 2 was in my bed in my hut. It was by then about seven o'clock and I went away to get my food. I had my meal with the masai and with Wangombe and Nguru. We did not have enough to eat. I took a little milk and went with it to Kenyon's kitchen - I found Kiarie and Ngari - both accused - feeding - there was just a little food left. I eat the food that remained, together with the milk I had taken. When I had finished eating. Kiarie said I shall go across to my people's place near Mr. Maklejohn's (Dwama Kanothi). I said shall you go when it is dark like this. He said "Yes because there will be two of us together. I said You and who else? he said "Ngari and I".

He then asked me to lend him my sword - he said he would take the master's and Ngari could take mine. I told him he could go and get my sword. I went with him and gave it him. It is Exhibit 2. He took the sword out of its sheath and left the sheath. I did not go back to the kitchen. I left my house and went to amama . I did not see Ngari I handed my sword to Kiarie. I did not go back to the kitchen. I had seen Ngari last in the kitchen. Kiarie took the sword and went out. I remained behind a

little while. He left about eight o'clock. He went away with Ngari. Kiarie was wearing a khaki shirt and khaki shorts. Exhibit XIV is Kiarie's and Exhibit XV also is Kiarie's - he was wearing them. He was also wearing at that time a brown kangu. Ngari was wearing khaki shorts nearly new and a khaki coat much worn - he has it on now. They did not take a lamp. I thought they took the direction of Mr. Evans because

Evid. pp. 21, 22

Mr. Meiklijohn is near Kenyon's.

Adjourned to 2. 15.

Sd/- C. H. Adams.

Resumed 2. 15 accused present.

Ash for prosecution.

Evidence of Nguthi continued:

I went to one Wainaina at Mr. Joubert's farm. This is about half an hour or so walk from Kenyon's. I told Nga Nguru and the Masai and Wanjorube - I am going to Wainaina. I did not meet anyone on the way to Wainaina. At Wainaina's I met Wainaina and his wife Waithera. I ^{saw them eating some} found ~~some~~ potatoes. - boiled English potatoes and I had some with them. I did not tell Wainaina about Kerure's conversation with me - because he belonged to another farm. I stayed there a short time away - perhaps half an hour. I then went back to my house about 9 p.m. I did not meet anyone on the way back. I found Wanjorube, Nguru and the Masai had gone to bed. The Masai moved into another hut that night - after I had gone to Wainaina's when I got back he had gone to his new hut near close to ours. There was also a stranger there - a houseboy looking for work - I don't know him. I asked the others Nguru and Wanjorube when they had gone to bed and they did not answer as they had gone to sleep. I went to bed, and was nearly asleep. It ~~may~~ have been about ten o'clock. I then heard the sound of a box being broken in Kenyon's kitchen which is about 100 yards away from the hut I was in - I got up - I did not say anything to the others. I put on my blanket and went to the kitchen. The kitchen door was open - There were two lamps alight in the kitchen - hurricanes lamps. The two accused were in the kitchen - Nguru accused 2 was nearer the door. Kiarie beyond him, the two lamps were on

The exact minutes that it takes to go from Wethere hut to Wainaina the witness cannot give with accuracy only approximately.
sd/- C.H.Adams

22.

17

16

Evid. pp. 22, 23.

the table behind them and they were squatting down. Exhibit XVI produced - a large enamel basin - was between the two accused, and a part of a box exhibit XVII next to Kiarie. Both the accused were naked - they had no clothes on. The basin Exhibit XVI was just over half full of water and there was blood in the water. I saw that Kiarie's foot was cut but it was not bandaged - when he went away at about eight o'clock his foot was not damaged. I passed behind Ngari accused 2 - he was near Kiarie - as I went behind Kiarie he said "don't take hold of me" I stand behind him. I said "what did you break the box for? Nag Ngari said "Kiarie was breaking some firewood". "I said I am going back to bed" - I went out and went back to bed.

23.

It is the custom among the Kikuya that if a man has touched any dead person no one else should touch him. Because of this I began to wonder why Kiarie told me not to touch him and wondered if he had killed someone. I was rather nervous as I had found them undressed, and seen blood in the basin. That night they both accused slept in the kitchen. I know because they did not come back to our hut and in the morning I saw them both in the kitchen before seven o'clock. I got up between six and seven o'clock on Monday morning - the next morning. I went to milk the cows. Before milking I went to the kitchen I found my tin which I use for milking with very dirty water in it. I asked Kiarie "what is this". He said clear the tin - don't get annoyed because it has been used. I cleaned the tin and milked the cows. I took the milk to Kiarie sanjorube had gone ahead of me with the milk. I asked Kiarie how he had ~~not~~ cut his foot. He said "I don't want to be asked. I cut it last night with your sword. I did not say yesterday that we wanted to go and kill the master -

24.

I said "you have killed the master?" Kiarie said "Yes we have killed him". I said "who are ~~you~~" He said "Ngari and I" Kiarie said "If there had been only one of us by himself the master would have conquered him". I said "how did the master want to hit you". He said "Ngari just threw the club at the lamp, but he did not hit the lamp - I then jumped at him with a sword and we grappled with the master. He threw me, Kiarie, down - and Ngari attacked him with his sword. Kenyon then ran away - we went to one side to intercept Mr. Kenyon. Then we caught him again and he died there where we met him." He then dragged him away.

I said "did you drag him away far?" Kiarie said "Not very far". I went away then because I had to help Ngari and Masai inspan oxen. One Kamau about 12 noon sent a message ^{to me} come to say the master was dead. I went to the milking herd out - grazing. A little later I went back again to Kenyon's house. I recognise ex. XII it is mine - when I went back to Mr. Kenyon's house after I left off work. Exhibit XII was at my hut. I had hidden the sheath Exhibit XII in the cattle boma near out hut. I hid it because Kiarie told me to hide it - about 12 noon - because he had had the sword belonging to it. He did not give me back my sword. I asked him for my sword and he said "I have put it away in a good place". He said "if Bwana askari comes I do not want him to find it". No one saw me hide the sheath. But I told the Masai that I had ~~hid~~ hidden the sheath. I saw Ngari that morning Tuesday until about 12 noon when we worked together with the oxen. I did not converse with him. He had not said anything to me. There had been trouble between Ngari and Kenyon. I don't remember when

25.

Evid. pp. 25, 26

when it was it may have been two months before. Ngari had been prosecuted by Kenyon and had been imprisoned for three weeks. On this day Tuesday I saw Inspector Ash between two and three o'clock - nearly three I think. I saw the Inspector's car coming so went and hid Exhibit XII in some cow - dung. Chuma got it - I shewed it him about 5.30 that evening.

I do not know Exhibit XI the club. Kiarie said if the Bwana askari police comes say I cut my foot with the tin when feeding the pigs.

Read over correct.

Sd/- C. H. Adams.

No XA by accused.

Sd/- C. H. Adams.

Adjourned to 10 a.m. 25th inst.

Accused further remanded.

24. 7. 29. Sd/- C. H. Adams.

25. 7. 29.

10 a.m. resumed - accused present.

Ash for prosecution.

Sd/- C. H. Adams.

29. 8. 29. P. H. OCHINGI P.P.S., sworn:-

I am stationed at Nzuruti. I know the accused but did not know them before this case. I remember the 9th inst I went with Inspector Ash to Mr. Swan's farm. I saw a corpse there. It was the body of Mr. Kenyon. I searched his clothes - I found Exhibit V with three cigarettes in it in his coat pocket. He was wearing his coat. I found 3/- in his left trousers pocket - Exhibit VII. The kodak film tin I found in his right trousers pocket - Exhibit VIII. A box of matches Exhibit IX in his coat pocket.

26.

Read over correct. Sd/- C. H. Adams

No XIn. by either accused. Sd. C. H. Adams.

Evid. pp. 25, 26

when it was it may have been two months before. Ngari had been prosecuted by Kenyon and had been imprisoned for three weeks. On this day Tuesday I saw Inspector Ash between two and three o'clock - nearly three I think. I saw the Inspector's car coming so went and hid Exhibit XII in some cow - dung. Chuma got it - I showed it him about 5.30 that evening.

I do not know Exhibit XI the club. Kiarie said if the Swana askari Police comes say I cut my foot with the tin when feeding the pigs.

Read over correct.

Sd/- C. H. Adams.

No XX by accused.

Sd/- C. H. Adams.

Adjourned to 10 a.m. 25th inst.

Accused further remanded.

24. 7. 29. Sd/- C. H. Adams.

25. 7. 29.

10 a.m. resumed - accused present.

Ash for prosecution.

Sd/- C. H. Adams.

NO. 654 Cpl. JUAN JOHLENG C.M.S., sworn:-

I am stationed at Mumuruti. I know the accused but did not know them before this case. I remember the 9th inst I went with Inspector Ash to Mr. Evan's farm. I saw a corpse there. It was the body of Mr. Kenyon. I searched his clothes - I found Exhibit V with three cigarettes in it in his coat pocket. He was wearing his coat. I found 3/- in his left trousers pocket - Exhibit VII. The kodak film tin I found in his right trousers pocket - Exhibit VIII. A box of matches Exhibit IX in his coat pocket.

26.

Read over correct. Sd/- C. H. Adams
No Xb. by either accused. Sd. C. H. Adams.

Evid. pp. 26, 27

No. 415 III Grade Const. Kiblangat arap Tapkokwa -
Lumbwa - affirmed:-

I am a plain clothes constable attached to the Rumuruti unit. I know the two accused. I have known them since the 9th instant a Tuesday. On that day I went to Mr. Kenyon's farm with Mr. Ash. There we saw a dead body - that of Mr. Kenyon. I was instructed by Mr. Ash to search for footprints and any detail of a struggle. I found a club a little distance from the body about twenty yards. The club is Exhibit XI produced. Near the club I found blood - three patches of blood. I found also three footprints near the body - one of them of the deceased - two native footprints of one man. There were near the body. I then called Mr. Ash and he came and he took the ~~stick~~ club. I showed him the footprints and the blood.

Read over correct.

Sd/- C. H. Adams.

No XKN by either accused.

Sd/- C. H. Adams.

27.

REMBESSI OLE MARUGU - Masai, affirmed:-

I am called "Masai" by Mr. Kenyon's other employees. I worked for Mr. Kenyon. I engaged with him about two months ago - as ox-driver, wages 16/- and rations. I know both accused. Accused I is cook to Mr. Kenyon. Accused 2 is a ploughman he ploughs while I drive the oxen. I lived in one hut until the night the master was killed - that night I went to another hut to sleep. The people in our hut were the two accused - Ngugi - Wanjarube Nguru and a boy Kithuka and I myself. I worked with accused II Ngari. The master had a quarrel with Ngari about two days before his death because the plough was broken. Kenyon asked Ngari accused II why he had not reported earlier that

Evid. pp. 27, 28

the plough was broken. He said he would give him two weeks wages. Accused II said "This bwana has a row with me every day I shall go and wait for him" on the path on his way back from Mr. Evans, and hurt him so that he will have to have a couple of weeks in hospital and we can work by ourselves". I said "don't talk like that - I thought he did not mean to do that. I thought it was just talk. This was the same day that he had been reprimanded by Mr. Kenyon. On Saturday I went to Mr. Ward's farm, stayed Saturday night and came back to Kenyon's on Sunday. I got back about 6 p.m. when I got back I met Kiarie accused 1. He said the master has had a row with Kithuka about some milk. He then said Kenyon had fined him, Kiarie - 16/- because of this milk. On Monday I saw the two accused at the kitchen about 6 p.m. They said "we shall go for a walk to Mr. Evan's". I said to Ngari accused 2 came back to our hut now". He said Kiarie will wait here for the master. I will stay here with him". I then went to the hut. They were speaking in Swahili. They also spoke in Kikuyu. I understand a little Kikuyu. Ngari said in Kikuyu we will go for a walk to Mr. Evan's.

(Note. The witness repeated this statement in Kikuyu - as he states Ngari say it EdC.H.Adams)

Kiarie accused I was wearing the khaki shorts Exhibit XIV and shorts Exhibit XV. He had no other clothing on at that time. Ngari was wearing khaki shorts - not very old - and a coat the one he has on now - and was also wearing a hat shirt. About 6 p.m. the master gave us our posho and then he went over to Evans's. Kenyon said he was going to Evans's. I went to our hut then. I had my food about 7 o'clock. I am

and Nguji, Nguru and Mwanjewe all fed together. Nguji said I had had enough to eat I shall go over to the kitchen. He also said that he was going over to Wainaina's Nguji took a little milk with him in a bottle and went with it to the kitchen to have some more food with the two accused. Nguji went to the kitchen about 7. 30. I went to sleep in another hut near by - very close by.

29.

In the morning Tuesday I got up and went to the kitchen where accused 1 and 2 were, and asked Ngari accused 2 to come along with me to work. Kiarie was lying down wrapped in a blanket belonging to Nguji, it is not accused 2 Ngari's custom to sleep in the kitchen - he has always slept at Nguji's hut - so had Kiarie. Ngari accused 2 was wearing the k shorts he is wearing now - corduroy shorts.- they are not the ones he was wearing the evening before. This was the first time he was wearing the corduroy shorts for his work. He had bathed that night. I saw he had from his appearance. When I saw Kiarie accused 1 on Monday evening, when Kenyon gave us our posho. Kiarie's foot was not wounded. I did not notice his foot next morning when I went to fetch Ngari. Kiarie feet were covered in his blanket. I went to work with Ngari. I said "where is the master this morning?" - He said "I don't know perhaps he has gone somewhere with Mr. Evans".

I heard about two o'clock that afternoon that the master was dead. Ngari said I am tired let outspan the oxen. I said 'no lets go on with our work". We worked till about three and then outspanned. He then went to our huts. I left it again and met Kiarie at the kitchen. He had some cotton wool on his foot. I said "what do you

Evid. pp. 29, 30.

30.

cut your footk with? He said "a tin cut it" I said "who put the cotton wool on?" he said "The master. I said what time did he put it on? He did not reply. I was at my hut when Mr. Ash came. I was with Nguji and others. When Nguji saw Mr. Ash's car he said "I must go and hide my sword because the Police will make an inspection of the hut and find the sword. He went away then I did not see him take it. I did not see him with the sword. I recognise the sheath Exhibit 12. He always wore his sword when at work herding - he did so on Monday - but not on Tuesday. One morning Kenyon came early and called Nguji - Nguji said "who is this white man who causes to call us at this time - Kenyon came in and called Nguji "came". Nguji began to get up. Kenyon came inside Nguji took his sword. I know his sword Exhibit 2. It was not then muddy and notched - it was in good order. Kenyon came in and seized Nguji - Nguji held his sword up. Kenyon told me to take his sword away and I did so. I don't remember what day this was.

When Mr. Ash arrived Kiarie had washed his clothes Exhibit XIV and XV and they were on 'urra' being dried, they were not yet dry. I took them off the line and handed them to Mr. Ash. Kiarie said in Kikuyu. I washed my clothes but Mr. Meiklijohn came before they were dry. I know Exhibit XVII. Kiarie uses it as a seat in the kitchen. When I saw this on the Tuesday it had been broken, part of one side had gone. It was not broken before that.

Head over correct.

Sd/- C. H. Adams.

No XIn by either accused.

Sd/- C. H. Adams.

Evid. pp. 31, 32.

HANJURUWE WA KAMITI - Kikuyu affirmed:-

I am a herdsman - cattle herd - for Mr. Kenyon. I had worked for him about three days before he died. Wages were 13/- p.m. and rations. I know the accused. They were working for Kenyon. Accused 1 as cook - accused 2 as driver. I slept in a hut with Nguru, Nguji. Ngari accused 2 and Kiarie I don't remember that he slept in the hut while I was there yes I do - he slept one night I remember in the hut with us - I remember one Tuesday Mr. Ash came. The master was missing on Tuesday morning. On Monday evening I had my food with Masai, Nguji and Nguru, we fed about 7 o'clock. We had enough to eat. Nguji said I have not had enough to eat yet, he took a little milk in a tin and went to the kitchen. He said I am going to eat in the kitchen. He said he was going over to see one Wainaina. He did not come back from the kitchen. I did not hear him come back later, we were partly asleep. Nguji said where is my sword, but as we were nearly sleep no one answered. Next morning - Nguji woke me and said "lets go and milk the cows. The two accused did not sleep there in our hut that night. On Monday I saw Kiarie at the kitchen about 6 p.m. I did not see that his foot was a cut then - it was not hurt. Next morning when I took the milk I saw his foot had been hurt. I asked what had happened and he said - it had been cut with a tin. I did not know whether that was correct or not, I did not question what he said.

Read over correct.

Sd/- C. H. Adams.

No Xln. by either accused.

Sd/- C. H. Adams

NGURU NA TUMITI - Mwikuya, affirmed:-

I work on Mr. Kenyon's farm. I had worked six days for him when he died. Wages 10/- p.m. and posho. I slept in the same hut as Wanjurube Nguthi; Ngari accused 2 and Masai and accused 1 Kiarie. On Monday night - the night Kenyon died - the two accused did not sleep in our hut. That same evening we fed at our hut, Ngurua Njuki and Masai and I. Nguji said I haven't had enough I shall go over to the kitchen. Nguji took with him a little milk in a tin and went to the kitchen. He said I am going to take a walk over to Nainaina. When Nguji left the kitchen Wanjurube and I had gone to bed. We did not hear him went back. I did not hear him ask anything when he came in. He had taken his sword out with him when he went to the kitchen - I saw it, he had it on when we were feeding. He unfastened it and put it down. When he went out I was lying down. I can't say whether he took the sword when he went out with the milk. I did not see. Next morning I woke up about seven a.m. I got up about 6.30 and made the fire. Nguji had then gone to milk about 6 a.m. barely daylight Nguji called Wanjurube to come and milk the cows. I was in bed when ~~lying~~ came back at night. That night accused 1 and 2 did not sleep in our hut. Next morning I saw Kiarie and his foot was cut. I saw him about ten o'clock. I asked him how he had cut his foot and he said it had been done with a tin at the pigsty. On Monday I finished my work about 4 p.m. I did not see Kiarie.

Read over correct.

Sd/- C. H. Adams.

No Xn. by either accused.

Sd/- C. H. Adams.

26

Evid. pp. 33, 34

NJEROGE WA KIARIE - Kikuyu, affirmed:-

I am called by other people Wainaina. I am not at work. I live at Mr. Joubert's. I know Ngari accused 2 because I have seen him some time ago. I know Nguji produced in Court. I also know Waithera produced in Court, my wife. On a Tuesday I left ferry house at Mr. Joubert's and went to Gilgil. The previous night Nguji had come to my hut about 7 o'clock. He remained until about half past eight. He had a little food with us - English potatoes, we had boiled them. My wife was then there was no one else, she did not have any.

Id. by Court.

I heard on the Thursday that Mr. Kenyon had died. My wife told me when I got back from Gilgil.

I call it seven o'clock a little time after the sun has set and it had become quite dark.

(Note by Magistrate - The last question was asked because it is now still light at seven o'clock official time - and it impossible to get accuracy to within half an hour or perhaps an hour from the native witnesses who going by the sun. Sd/- C. H. Adams).

No Xn by either accused. Read over correct.

Sd/- C. H. Adams.

WAITHIRA WA KEHAGI, Kikuyu woman affirmed:-

I am wife of Njerogi wa Kiarie previous witness. We live at Mr. Joubert's. I don't know the accused. I know the man produced in Court - his name is Nguji. I have seen him, he came to our hut. I remember the day I was called by Mr. Ash to Mr. Kenyon's farm. He had gone the day before Nguji had come to our hut before my husband had left for Gilgil. Nguji came one evening and my husband left the next day for Gilgil. Nguji left our hut about half past eight. We gave him some food when he came some English

Evid. pp. 35, 36

NJEROGE WA KIARIE - Kikuyu, affirmed;

I am called by other people Wainaina. I am not at work. I live at Mr. Joubert's. I know Ngari accused because I have seen him some time ago. I know Nguji produced in Court. I also know Waithera produced in Court, my wife. On a Tuesday I left ferry house at Mr. Joubert's and went to Gilgil. The previous night Nguji had come to my hut about 7 o'clock. He remained until about half past eight. He had a little food with us - English potatoes, & had boiled them. My wife was then there was no one else. She did not have any.

ID. by Court.

I heard on the Thursday that Mr. Kenyon had died. My wife told me when I got back from Gilgil.

I call it seven o'clock a little time after the sun has set and it had become quite dark.

(Note by Magistrate - The last question was asked because it is now still light at seven o'clock official time - and it impossible to get accuracy to within half an hour or perhaps an hour from the native witnesses who going by the sun. Sd/- C. H. Adams).

No KXn by either accused. Read over correct.

Sd/- C. H. Adams.

WAITHIRA WA KIBAGI, Kikuyu woman affirmed:-

I am wife of Njerogi wa Kiarie previous witness. We live at Mr. Joubert's. I don't know the accused. I know the man produced in Court - his name is Nguji. I have seen him, he came to our hut. I remember the day I was called by Mr. Ash to Mr. Kenyon's farm. He had gone the day before Nguji had come to our hut before my husband had left for Gilgil. Nguji came one evening and my husband left the next day for Gilgil. Nguji left our hut about half past eight. We gave him some food when he came some English

potatoes - boiled. He ate the potatoes with my husband.

Read over correct.

Sd/- C. H. Adams.

No XIn by either accused.

Sd/- C. H. Adams.

KAMAU WA GITHAJJA, Mwikuyu, affirmed:-

35.

I am a driver for Mr. Kenyon. I have worked for him for about two years and eight months. My wages 12/- p.m. without rations. I am a squatter - I have seen Kiarie accused 1 at Mr. Kenyon's he worked as Kenyon's cook.

I know accused 2 he worked for Kenyon as driver. I remember the day my master was found dead a Tuesday. I remember that I conversed with Kikuyu the day before I spoke to him about Kiarie. I had come to the kitchen on the previous day to that - Sunday. I found Kiarie at the kitchen. He was squatting down and his head leaning forward on his hand. This was about the ten o'clock. I said what are you thinking about on that attitude. He said "I am feeling upset about my shillings" I asked him why? He said "the master has fined me for nothing". Then he said "I shall wait for this master of ours, when he goes to Mr. Evans I shall "piga" him. I said "you can't talk like that" Then I went out and went to the master house. I met Kenyon there repairing a maize's sheller. I said to Mr. Kenyon I have heard from Kiarie that if you go to Mr. Evans' he will be in wait for you on the road and "piga" you. Mr. Kenyon then spoke in Swahili and English and said 'Go on, Kwenda nyi, hii hapana kitu. I went away and went to my hut. On Monday I came

and my master said 'you go and harrow - I harrowed until the work was finished - about 2 p.m. That day Ngari was wearing some khaki shorts - not the one he has now. On Tuesday morning I met Kiarie at the kitchen. I saw his foot it had been cut. I asked him what had hurt his foot. He said "then tin I was taking pigs food". I said 'why did you not get someone to sew it up? He said "at the time there was no one who could sew it". I said why not - he said "it was at night". He asked me if it was a good thing to put salt on it. I said "yes but it will smart very much if you do" I then went to plough. He himself got some cotton wool and salt from the bed room of Kenyon's house. It was then I went to work - till about 10 o'clock.

Then I saw a man of Mr. Evans coming he came to the house - and I got the news that the master was dead.

I then told Kiarie that Evans' man had come and asked where is the Boy. I called Kiarie. I said "You had better go with him" I find out what has happened. Kiarie did not go. He said "I can't go - I am unwell - you go Kamau". I went with Evans' man to the body of Mr. Kenyon. I came back and met Kiarie on the way, he had followed me. He asked where is the master - I said "down here? He came to within about twenty yards of the body, and came back to me. He did not say anything. On Tuesday Ngari at work wore the shorts he is wearing now. I had not seen him wearing them at work before.

37.

Read over correct.

Sd/- C. H. Adams.

(In by Accused 1. Accused 1 said his wages had been cut. I did not ask him why.

Read over correct.

Sd/- C. H. Adams.

Evid. pp. 35, 36. (28)

and my master said 'you go and harrow - I harrowed until the work was finished - about 2 p.m. That day Ngari was wearing some khaki shorts - not the one he has now. On Tuesday morning I met Kiarie at the kitchen. I saw his foot it had been cut. I asked him what had hurt his foot. He said "then tin I was taking pigs food". I said "why did you not get someone to sew it up? He said "at the time there was no one who could sew it". I said why not - he said "it was at night". He asked me if it was a good thing to put salt on it. I said "yes but it will smart very much if you do" I then went to plough. He himself got some cotton wool and salt from the bed room of Kenyon's house. It was then I went to work - till about 10 o'clock.

Then I saw a man of Mr. Evans coming he came to the house - and I got the news that the master was dead.

I then told Kiarie that Evans' man had come and asked where is the Boy. I called Kiarie. I said "You had better go with him" I find out what has happened. Kiarie did not go. He said "I can't go - I am unwell - you go Kaman". I went with Evans' man to the body of Mr. Kenyon. I came back and met Kiarie on the way, he had followed me. He asked where is the master - I said "down here? He came to within about twenty yards of the body, and came back to me. He did not say anything. On Tuesday Ngari at work wore the shorts he is wearing now. I had not seen him wearing them at work before.

37.

Read over correct.

Sd/- C. H. Adams.

XXI In by Accused 1. Accused 1 said his wages had been out. I did not ask him why.

Read over correct.

Sd/- C. H. Adams.

Evid. pp. 37, 38 (29)

Accused II no XII.

Sd/- C. H. Adams.

Adjourned to 2. 15.

2. 15 Resumed accused present. Ash present.

Sd/- C. H. Adams.

KITHUKA WA KAMAU - Kikuyu boy affirmed:-

I worked for Mr. Kenyon for about four months up to the Sunday before he died. I was kitchen boy. I know Kiarie I worked with him. I know Ngari - he was a driver. On Sunday - that Sunday - about 6 p.m. Mr. Kenyon - hit me because of some milk being stolen. Accused I had taken this milk. I left his Kenyon's employment that day Sunday. I know Exhibit XI the club. It was on a ~~spring~~ pair of horns in his house, in the dining room. The club was there on Sunday when I left off working for Mr. Kenyon. I recognise Exhibit I sworn - Mr. Kenyon's and the sheath Exhibit No. 13. The sword was on its place on the wall on the right hand side of the fireplace in the dining room.

36.

Read over correct.

Sd/- C. H. Adams.

No XXN by either accused.

Sd/- C. H. Adams.

OHUMA ABAR CHESEKIAN - Lumbwa - affirmed:-

I live at Amuruti. On 9th instant I went out with Mr. Ash to Mr. Kenyon's farm on the Leshau area. I recognise Exhibit XII I took it out of a heap of cow dung in the calf yard at Mr. Kenyon's on the 9th. Njugi showed it me. I recognise Exhibit 2. I found it also in the cattle boma it was hidden in cow dung. I got it about 7 a.m. on Wednesday the 10th instant.

I found Ngari accused 2 on Wednesday wearing two

two pairs of shorts. Khaki ones beneath corduroy ones. I told him to take off the khaki ones and I took them and gave them to Mr. Ash. I asked why he wore two pairs he said because he found it cold. I recognise Exhibit 4, the lamp. I found it on a Kikuyu maize shamba near the place where the fight with Kenyon took place. I found this on the Wednesday. I handed Exhibit 2 the sword and Exhibit III the sheath to Mr. Ash.

Read over correct.

Sd/- C. H. Adams.

No XXN.

Sd/- C. H. Adams.

UKANJI ROUGH C.M.S. sworn (Jaluo)

I am epl. East at Rumuruti. I know Ngari accused 2. Ngari accused 2 was imprisoned for 14 days two or three months ago. When the accused were in prison on this charge just after they were brought in I conversed with them about 6 p.m. Accused 2 Ngari said said "I did it, but I shall make my statement in Court.

(statement admitted (Sgd) C. H. Adams.

I have not conversed with ~~Exi~~ Kiarie since then.

R.O.C.

(Sgd) C. H. Adams.

No XXN by either accused.

(Sgd) C. H. Adams.

MUGO KATIGMA - Accused 1 known as Kiarie:-

I did kill Mr. Kenyon - I killed him about 10.30 at night, and went back to the house about 12 midnight. On Tuesday the Inspector of Police came and arrested me. I did not know that he would know that I had done it.

Ngari and I and the witness Njugi killed Mr. Kenyon.

I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct and it contains a full and true account of the statement

made by him.

(Sgd) C. H. Adams.

Ngari accused 2 states:-

"I killed Mr. Kenyon - I did not want to kill him. I went with Kiarie and Njugi to kill him; they invited me".

I believe that this confession was voluntarily made. It was taken in my presence and hearing and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Sgd) C. H. Adams.

Accused 1. I desire to call Njugi for cross examination as I wanted to make my statement before asking him questions.

NJUGI WA KIRAMA affirmed recalled.

ID BY ACCUSED 1.

I have nothing to add to my statement of yesterday.

Accused II no. KN.

Read over correct.

(Sgd) C. H. Adams.

34.

Charge.

I Charles Harold Adams, Resident Commissioner of Mombasa do hereby charge you I Mugo wa Katigwa, and you II Ngari wa Wera that you the said Mugo Katigwa and you the said Ngari Wera on or about the 8th July 1929 at place on or near the farm of Mr. Ernest Evans in Laikipia did commit murder, to wit by causing the death of one Ernest Cunliffe Kenyon and that you have thereby committed an offence punishable under section 302 of the Indian Penal Code within the jurisdiction of the Supreme Court and I direct that you be tried on that charge by the Supreme Court of Kenya.

(Sgd) C. H. Adams.

H. C.

1st Class Magistrate.

Mombasa.

July 25th 1929.

NOTE BY COURT.

I wish to congratulate Mr. S.I. Inspector of Police for the prompt and efficient investigation he and his assistants carried out in this case and also to note my appreciation of the fair and careful manner in which he conducted the prosecution in Court.

(Sgd) C. H. Adams.

Resident Commissioner.

25. 7. 1929.

Substance of information in brief:-

Mr. E. Evans reports that during last night Mr. E. Kenyon was murdered between his farm and Mr. Evans'.

(Sgd)

1/c. Mombasa Station.

Forwarded
Magistrate
Time M.H. J.M.
Date 9.7.29.

EAST AFRICA PROTECTORATE.

In His Majesty's High Court of East Africa

at Nairobi.

CRIMINAL CASE No 96 of 1929.

at the Sittings holden at _____ on the _____ day of _____ 191

Prosecutor

Rex.

(by

Accused

1. RWL 'A' NKU.2407732 Mugo Katigwa.

2. NKU. 2409024. Ngari Weru.

(by

Date of hearing

Charge Murder under Section 302 I.P.C.

Committing Magistrate C.H.Adams Esq.:

Court of Committing Magistrate I Class Court.

Date of Commitment 25th July, 1929.

Original Criminal Case No 202 of 1929, of Rumuruti.

Judgment

Both Accused sentenced to Death.

26.8.29. Howell for Crown.

Allan for accused.

Persons who are present.

Warrants on which the accused persons are held produced.

Ismail Ithingo Official Interpreter.

Charge ^{under} murder S. 302 read and explained to Mugo Katigwa says:-

I was annoyed by the deceased withholding my wages and I had no other means of subsistence. I killed the deceased and I had no excuse except the one I have given.

R.O.C.

Charge ^{under} murder S. 302 read and explained to Ngari Weru who says:-

I did kill him in company with the first accused and another. I was very fond of him. He had me imprisoned for 8 weeks for being absent without leave. I returned and continued to work for him. I did not intend to kill him but was forced to do so. Deceased used to like me and I liked him. I was compelled by the other two and I had only a stick with me and gave him a blow with it. Those two told me that I must come along and kill the European because he had me imprisoned. I said I was not willing to do so, but they said I must, and as they were also my friends I accompanied them for the purpose of taking part in the killing.

R.O.C.

Although the prisoners have pleaded guilty to the charge of murder and it would be competent for me to act upon their pleas and sentence them on the principle that was upheld by the

Court of Appeal in England in February 1929 in the case of Rex v. Clarke (an appeal from Finlay J) - a principle of which I may say is embodied in Section 224(2) Cap. 7 Laws of Kenya, I think it advisable to hear some evidence as to the circumstances regarding the plea of guilty in the case of each prisoner which I do.

Witnesses:

Kibia Ireri.

Gatibou Kameu

Wathigo Kuria.

Howell opens 10.15 - 10.20.

Ernest Evans (Sworn).

European Farmer in Laikipia District. I remember Kenyon coming and spending the evening with me on 8th July this year. he left my house to return home at 10 p.m. he took with him a lantern belonging to me. I saw him set off for his own farm which was about a mile away. The next morning a native employed by me, Kimimia made a statement to me. I accompanied him to a place he pointed out to me. When I got there I found Kenyon's body about 100 Yards from the bottom of a gully hacked to pieces. This was about $\frac{1}{2}$ mile from my house. Nearby, I found pools of blood and footprints. The body had been dragged about 100 Yards. About 100 Yards away from the body there were marks of a struggle. I had the body covered with branches and sent for a sheet. I sent immediately for Dr. Meiklejohn and went myself for the police. I was not present at the medical examination, the doctors got there before me.

XII. I had known Mr. Kenyon about 3 years. During the evening of the 8th July Kenyon said he had found one of his house boys stealing milk and he had immediately cut him one month's pay. He found the milk hidden through chasing a mouse. There was also conversation about a boy of his having pointed a knife at him. It was some trouble with a herd boy. I never heard Kenyon had a bad name with his labour. He was very good with them.

R.C.C.

Sd/- Joseph Sheridan.

Robert Alan Cunningham (Sworn).

Colonel in R.A.M.C. (Retired). I am in practice as a medical practitioner. I remember on 9th July last accompanying

accompanying Inspector Ash to Mr. Egan's farm. I found there the body of Mr. Kenyon whom I had known before. I made an examination of the body. I made notes at the time to which I refer. I found very numerous wounds in the head and body and limbs. The wounds on the head caused death. There were 3 very severe wounds on the head, one almost severing the top of the skull from the rest of the head. This wound alone would have caused death. Very great violence must have been used. There was a punctured wound on the left side of the chest - a stabbing wound. It penetrated the lung. Both arms were badly wounded. The right fore-arm had a wound about almost severed the hand - almost cut it in two. There were deep wounds on both legs. There was one at the back of the right knee about 2 inches long. There was a wound about 3 inches long going to the bone on the left skin. There was another deep wound on the right leg penetrating to the bone. There were numerous smaller wounds. Exs: 1 & 2, Native swords could have caused the wounds I saw. There was a contused wound on the head that might have been caused by a stick. I afterwards examined Mugo, accused No: one's foot. On the outer side of the right foot there was an incised wound. It could not have been caused by a tin falling on the foot. It could have been caused by Ex: 1 or 2. It was in such a position that it might have been self-inflicted through a person aiming a blow at someone else and missing.

Exs: 1 & 2

XX: none.

P. 11.

Sd/- Joseph Sheridan.

Dorothy Maud Campbell Meiklejohn (Sword).

Medical practitioner living at Murogo in the Laikipia District. I arrived at Mr. Egan's farm in response to a message on 9th July about 11.30 a.m. before last witness. I saw Mr. Kenyon was dead and waited for the police and last witness. I have heard the description of the injuries given by last witness. I agree with it and the evidence as to cause of death. Roughly Mr. Egan had been shot about 11.30 a.m.

hours or had been killed before midnight.

I also examined accused No: one's feet. I agree that the wound was consistent with having been caused by a sharp instrument and inconsistent with having been caused by a tin.

Q: none.

R.O.C.

Sd/- Joseph Sheridan.

Frederick Phillips Booth (Sworn).

Farmer in Laikipia district. I am a cousin of deceased. I know both accused. The tall boy, Mugo was a house-boy of Kenyon's and No: 2 accused was a Shamba and plough boy. Kenyon was about 38 years of age at the time of his death. He came to this Colony 3 or 4 years ago and for some time was assistant to myself. On 27th July - the day after he was killed - I went to Kenyon's house. The Police investigation was actually going on. I noticed the sword Ex: 1 was missing from its usual place, the wall of his house. The stick Ex: 3 had been a going stick at his house. It was missing from its place also. I asked accused No: 1 where it was. He told me that Kenyon had removed it from the wall and put it in his office behind a pile of boxes. I took the accused to the office with the askaris and on removing the boxes found Ex: 1. Both accused were present. I understand No: 2 agreed with what No: 1 accused had said. The sword had been obviously recently cleaned. It was greasy whereas before when it was on the wall it had been dusty. I pointed this out to the askari in presence of the accused and took it to the Inspector.

Ex: 3

Q: none.

R.O.C.

Sd/- Joseph Sheridan.

Mugi Kirua (affirmed). Kikuyu.

I was herd to Mr. Kenyon. I had been working for him for a month and 3 days when he was killed. I lived in the same hut with accused 1. Mugo who is also known as Kiarie. I did not know the 2nd accused before. I had previously worked on the same farm. I went on leave to Kikuyu. When I got work on Kenyon's farm I found 2nd accused there. He lived in the same hut with me and

and Ngari. I remember the day Kenyon was killed. He was killed on Monday evening. On that evening I had a conversation with the 2 accused. First of all, the deceased had wished to beat me on the previous Friday. On Sunday when I returned from herding the 1st accused told me that his wages had been cut by his master. He said he was consequently greatly annoyed with his master and that he wanted to kill him. He suggested if I were willing I might help him. I said I would not help him as the Government would know about it and we would be arrested. The 2nd accused was in the kitchen and this happened outside the kitchen. The 1st accused said if I were not willing to help to kill our master he would ask Ngari, 2nd accused. That was all that was said on the Sunday. On Monday about 8 p.m. I went to get the milk and met the 1st accused. He told me the master was going to Swana Evans (Bwana Gitbune) that he was greatly annoyed with his master and that he was going to kill him, going to lie in wait for him and kill him. He further asked me whether I was going to help him or still refused. I said I was not going to help him. Nobody else was present. He told me he was also going to ask Ngari and if he refused he was going to abandon the idea of killing Kenyon. Accused 2 used to be in the kitchen when these conversations took place and could have heard. He was in the kitchen when No: 1 said "if you dont help me I will ask Ngari". Ngari at that time was outside the kitchen, but was within earshot. I went back to my hut for my food leaving both accused in the kitchen. This was about 7.30 p.m. Not being satisfied with the food in the hut I returned for more to the kitchen. Both accused were there feeding. Accused No: 1 said he was going home to Mr. Weiklejohn's farm. His mother lives there. He asked me if I would let him have my sword as Ngari was taking the Bwana's sword. He said it was night and dark and he was going a far distance. He said he was going with Ngari. Ex: 2 is the sword I lent him. It did not have the dents it now possesses when I lent it to him. I saw the sword Ex: 1 in the kitchen - leaning outside the wall

wall. I was told that Ngari was to take it and Kiari was to take mine. Nothing was said about Mr. Kenyon during this conversation. I left them in the kitchen and went back to the hut. I did not see them leave the farm. I went to visit some friends. I returned about 9 p.m. - having been away for about 1/2 hour. I went to bed. Those I saw on my return were asleep. I spoke to them but they did not answer. After I had been in bed some time I heard as if beating of a wooden box. I went to the kitchen which was quite near. I found both accused in the kitchen. They were washing themselves and warming themselves. There was water mixed with blood in the basin Ex: 4. They were naked. Their clothes were on the top of a box in the kitchen. I did not notice if they were wet. I did not at that time notice Kiari's foot, but in the morning I saw his foot was out. The previous evening when he borrowed my sword his foot was not out. I asked him about his foot. He said "don't ask me about it, I cut myself when I was beating the European". When I say the accused were washing themselves, I refer to both. I then spoke to Ngari. I asked him why he was beating the box and he said Kiari wanted to boil some water. I did not ask for any explanation about the blood. The next morning when I asked Kiari about cutting his foot and he said he had cut his foot while killing the European, and that if the police came I was to say he had cut himself while feeding the pigs. I asked accused with whom he had killed Kenyon and he replied "with Ngari". Ngari was not then present. I asked him how the killing took place and he replied that they met the European on the way and had cut him and stabbed him. I asked whether they had left him where they had killed him and he said, "No" that they had dragged him some distance from the spot. I never got my sword back. It was subsequently found in the cattle boma buried in the mud. Ex: 5 is the sheath belonging to Ex: 2. Accused 1 told me that he had hidden Ex: 2 and I had better hide Ex: 3, so that the police would not find it. Afterwards I showed the askari where I had hidden Ex: 3.

Ex: 4

Ex: 2

XIII. I keep Ex: 2 hung near my bed, I remember the morning Kenyon came and called me out. I drew my sword. Kenyon had struck me. I wanted to strike him back when he caught my sword. I put it down. Both accused were present and saw the incident. They knew what I was struck for. After being struck by Kenyon I went out to do my herding. I came back and went to the kitchen. Kiari asked me why I had been struck. Ngari was there. I said I had been struck for not getting up and going to my work. On Sunday evening Kiari told me he had been fined, he told me at 4 p.m. there was conversation about Kenyon. Kiari said Kenyon had cut his wages and that he was tired as there was no reason for cutting his wages. I asked him the reason for the cutting he said ^{it} he was on account of milk which had been hidden. I asked him why he had not hidden the milk far away. Kiari said he was very angry with Kenyon. I did not say I was angry at having been struck. Ngari said he was angry at having been put in jail. My anger had cooled. On Sunday the accused came to the hut after the Gwaha had had his food. They slept in the hut. On Monday I went to work at 6-30 a.m. I brought back the milk about 8 a.m. I saw Kiari in the dairy. Ngari had left for his work. I next saw them that evening about 5 p.m. I & 2 (both) accused were in the kitchen. I went to the hut for the milk can at 8 p.m. I had conversation with the deceased accused No: 1 outside the kitchen and Ngari was inside. Kiari told me that Kenyon was going to Evan's and said it would be a good thing to kill Kenyon. Nothing was said about my sword then. Kiari asked me to be one of the party; he knew I had a sword. I knew Ngari had no sword. Nothing was said about my sword at 8 p.m. The accused knew where my sword was kept. I was a very short time in the kitchen at 8 p.m. From milking I went to my hut at 8 p.m. I had food in the hut with the Masai and then returned to the kitchen. It was there and then Kiari said he was going to Mankle John's. I asked him was he not frightened at going in the dark and he said Ngari was

was going with him. I went to Wanaina's or Mr. John's farm. I did not take a light. I returned with a firebrand. Wanaina's is a mile from my hut. I left my hut at 8 p.m. and got to Wanaina's at 8-30 p.m. Kiari was wearing a sort of jumper coat and khaki shorts. Ngari was wearing a worn out jumper coat and partly worn out shorts. When Kiari asked me for the lean of my sword, I told him to get it, he did get it. They had no lamp; there was none in the kitchen. I went to Wanaina's house. I found him eating potatoes. I had potatoes. I spent 1/2 hour eating. I left Wanaina's about 9-30 p.m. I went straight to bed on getting back. I think I was in bed about 1/2 hour when I heard the noise of the box. The others in the hut were asleep and I went out alone. I did not go because I thought the accused had returned. I merely went to find out what the noise was. I knew I could shout out if I saw anything happening.

Ex: 6 & 7. Ex: 6 is Kiari's jumper. Ex: 7 Khanzu belongs to Kiari.
 Witness adds after R.O.

I discovered on Tuesday not Monday that Kiari had cut his foot.

R.O.C.

Sd/- Joseph Sheridan.

Albert Ash (Sworn).

Inspector in charge Police at Rumuruti. In July I went to Evan's farm where Kenyon had been murdered. Ex: 8 is the sketch of the scene I made. There were traces of the body having been dragged about 10 Yards. At the place from which the body had been dragged there were traces of a struggle. Ex: 2 was found about 60 Yards from the body. There were two patches of blood near where Ex: 2 was found. Nearby on a small embankment I found traces of persons as if they had been sitting in the grass. I went to the deceased's house when I had finished the Examination of the gully. I saw the first accused; he had a piece of clean cotton wool on his foot. I asked him what happened to his foot. He said he had cut

cut in the previous day with the edge of a Kerosine Oil tin. I was present when the cut was examined by the doctors. Ex: 1 was given to me by Mr. Booth on the 9th and Ex: 2 was given to me by my Assistant Chuma. I was not present when Ex: 2 was found. Ex: 9 shorts with black thread and Ex: 6 I found on the 9th (afternoon) in deceased's kitchen. They were damp and hanging on a line. Ex: 7 Khanzu had marks as if of blood on it. I sent it to the Government analyst and received Ex: 10 which shows that the marks were those of human blood. I received back the report with the ~~name~~.

Ex: 10

IXr: none.

R.O.C.

Sd/- Joseph Sheridan.

Statement of accused No: 1 before the Magistrate read and admitted as evidence under the C.P.O. Accused admits having made the statement and adds that he does not wish to alter it or add to it. He says that nobody induced him to make the statement and that he had no object in making it but to speak the truth. "It was useless to hide" he concludes.

Statement of accused No: 2 before the Magistrate read and admitted as evidence under the C.P.O. Accused admits having made it and that he does not wish to alter or add to it. He says nobody induced him to make it, that he had no motive in making it but to speak the truth.

Sd/- Joseph Sheridan.

No witnesses for defence.

Howell says he does not wish to address the Court.

Allan states that it would be a waste of time to address the Court in view of the statements of the accused.

I sum up.

(Official Note of my summing up taken and attached.)

No: 1 assessor.

I find both the accused guilty. The excuse about the wages is not sufficient. Everyone knows where to go if assaulted or if his wages are cut - to the District Commissioner or the

the police.

R.O.C.

No: 2 assessor.

The accused persons have not denied having done the killing and we elders are quite just as angry as the Judge. There was no reason for killing.

R.O.C.

No: 3 assessor.

They have done wrong. That is all.

A.H.

R.O.C.

IN HIS MAJESTY'S SUPREME COURT OF KENYA AT NAIROBI.

SUPREME COURT CRIMINAL CASE NO. 96 of 1929.

(From Original Criminal Case No.202 of 1929 of the 1st Class Court at Busuruti.)

Re:Prosecutor.

versus

- 1. RWL 'A' NKU.2407732 Mago Katigwa. }..Accused.
- 2. NKU.2409024. Ngari Wera.

JUDGMENT:-

The accused persons have been charged with having murdered a Mr. Kenyon a European farmer resident in the Laikipia district. I summed up the case at some length to the assessors who are unanimous that the accused are guilty. The accused on more than one occasion during the trial admitted their guilt and there is no reason whatsoever for my doubting that they confessed their crime for any other reason than a desire to speak the truth. There is further no reason for thinking that they were induced by any one to make false confessions; in fact they specifically denied such being the case. In addition to these admissions of guilt there is the evidence of the witness Njuki which speaks to their guilt. The evidence of Njuki is corroborated by the statements of the accused and the statements of the accused corroborate the evidence of Njuki. So that assuming Njuki to be an accomplice the case against the accused, I find to be conclusive of their guilt. The murder was a particularly brutal and cowardly one on a defenceless man at night at a time when he could have had an apprehension of an attack.

brutally hacked him to pieces. It was deliberately considered previously and there is no extenuating circumstance of any kind in my opinion. As one of the assessors truly remarked assuming that the deceased had cut the wages of one of the accused, the doors of the Court were open to the aggrieved party. I find both accused guilty of murder. I sentence them each of the accused to be hanged by the neck until he is dead and notifying him that he has 30 days within which to appeal.

Sd/- Joseph Sheridan.

Read

26/8/29.

DRJ.

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SUPREME COURT, NAKURU.

Monday, 28th August, 1957.

CRIMINAL CASE NO. 98.

REX v. MUGI WA M'GIGWA AND NGARI WENDU.

Judge : His Honour Mr. Justice Meredith.

Crown Counsel : Mr. C. S. Howell.

Advocate for the Defence : Mr. J. M. ...

of guilty to a charge of murder on the lines of that particular case, but on reflection I decided formally to enter a plea of not guilty in the case and try it to a conclusion to see what the evidence disclosed.

Subject to what you and Mr. Howell are prepared to say to me, I think probably desirable in this case to enter a plea of guilty and to proceed to try the case as though a plea of guilty had not been entered.

Mr. Howland; I am not at all sure that the second accused's statement amounts to a plea of guilty as it stands at present.

As it stands at present it would, given the words their ordinary interpretation, amount to a plea of guilty to a plea "I did kill him in company with the first accused..." were he never to have been a law at all, or even were he to have been a law at the time that Benson was killed it would amount to a plea of guilty to murder.

... ..

... ..

... .. think it reads "I did kill him in company with the first accused..." were he never to have been a law at all, or even were he to have been a law at the time that Benson was killed it would amount to a plea of guilty to murder.

... ..

... ..

... ..

... ..

4.

ADVOCATE FOR THE DEFENCE: I agree, Your Honour.

HIS HONOUR: I think, in the circumstances, I would record a plea of guilty, Mr. Howell, in each case, but, as I think the section of the Code provides, I shall not act on it at present. The case will be, of course, supposing you had no other evidence at all, there is the plea of guilty on which it would be competent for me to sentence the accused, but I formally record a plea of guilty, and the evidence need not be as long as it would in other circumstances.

CHIEF JUSTICE: I think I can receive the evidence to about four witnesses, but it would be as well if I tendered formal evidence.

HIS HONOUR: That was what was at the back of my mind. In the case at Achelida, I recognised the right to enter and accept a plea of guilty, but I thought it better in the circumstances to take evidence to a certain extent.

Although the prisoners have pleaded guilty to a charge of murder and it would be competent for me to act on their pleas and to sentence them, on the principle that was upheld by the Court of Appeal in England in February, 1929, in the case of Rex v. James, an appeal from Mr. Justice Widdley, the principle of which is embodied in Section 224(2) of Cap. 7 of the Law of Kenya, I think it is advisable to hear some evidence as to the circumstances regarding the plea of guilty in the case of each prisoner.

The ordinary practice in these cases is that witnesses who are giving evidence later, that is after the first prosecution witness, leave the court until such time as they are called.

CHIEF JUSTICE: I am glad to my friend that the witness were in court and he had no objection.

ADVOCATE FOR THE DEFENCE: I have no objection.

HIS HONOUR: There is really, no party, Mr. Howell, where they should be kept out of court in the circumstances, they may remain in court.

CHIEF JUSTICE: I think probably the only witness that might be sent out is the other native.

CHIEF JUSTICE: He is out already.

HIS HONOUR: Mr. Howell, I am ready to proceed.

CROWN COUNSEL: May it please Your Honour and Gentlemen, the Assessors - you have heard that the two accused are charged with the murder of Ernest Conliffe Kenyon by hacking him to death with their swords.

The two accused were both servants of the deceased man - the first accused as a cook and house-boy, and the second accused as a labourer on his farm.

I think you will agree with me, when you have heard the evidence which I shall call in a minute, that this was as foul and brutal a murder as has been committed in this colony in recent years and, when you consider the statements which you have just heard from the two accused, as senseless as it was brutal. In view of those statements, I do not propose to go into the evidence in any detail at present, but shortly, what the prosecution allege took place, was this:

The deceased man went to the house of a neighbour, Mr. Ernest Evans, on the night of his death. He dined there with Mr. Evans and left at about 10 o'clock, having borrowed a lantern to find his way home. Mr. Evans watched him out of sight with his lantern, and that was the last time that the deceased was seen alive at any rate by anybody who is giving evidence in this case. It is alleged by the prosecution that these two accused, who may or may not have been accompanied by somebody else, lay in wait in a gully on Mr. Evans' farm, and when he came along they fell upon him with swords and did him to death. The evidence which I shall call before you will be quite short. One of the witnesses - Njugi - who is a fellow-servant with the accused of the deceased man, was in the somewhat unusual position of being the confidante of the two accused people as to the commission of this crime. You will form your own opinion as to the weight of his evidence from the fact that you may or may not suspect that he knows more about the crime than he says. That does not affect the fact that the evidence that he gives is corroborated on almost every material point by the evidence of other witnesses, including the accused themselves.

I think, Your Honour, it will be convenient to call my evidence first. Mr. Ernest Evans.

He oath was administered.

Q. What is your name, first name?

A. Evans.

Q. Are you a farmer in the Makipia district?

A. Yes.

CROWN COUNSEL: Do you remember the night of the 8th July?

WITNESS: I do.

CROWN COUNSEL: Mr. Kenyon coming and spending the evening with you?

WITNESS: I do, yes.

CROWN COUNSEL: Did he leave your house to return home at 10 o'clock at night?

WITNESS: He did.

CROWN COUNSEL: Did he take with him a lantern belonging to you?

WITNESS: Yes.

CROWN COUNSEL: Did you see him set off in the direction of his own farm?

WITNESS: Yes.

CROWN COUNSEL: How far away was his own farm?

WITNESS: 2 miles.

CROWN COUNSEL: The following morning did a native labourer of yours, Kimbia, come and make a statement to you?

WITNESS: He did.

CROWN COUNSEL: Did you then accompany him to a place which he pointed out to you?

WITNESS: I did, yes.

CROWN COUNSEL: What did you find when you got there?

WITNESS: I found Mr. Kenyon's body, hacked to pieces.

CROWN COUNSEL: Where was it lying?

WITNESS: About 100 yards from the bottom of a gully.

CROWN COUNSEL: How far from your house was this?

WITNESS: About half a mile.

CROWN COUNSEL: Were there any signs of a struggle? I think there were not immediately around the body, but did you find any marks of a struggle nearby?

WITNESS: I found pools of blood and sort of footprints.

CROWN COUNSEL: Near the body, or further off?

WITNESS: Not near the body. The body had been dragged about 100 yards, and I followed the mark to where it had been done.

CROWN COUNSEL: About 100 yards away there were marks of a struggle?

WITNESS: Yes.

CROWN COUNSEL: What did you do then?

WITNESS: I had the body covered with boughs immediately and sent for a sheet to cover the body.

CROWN COUNSEL: Did you yourself send for a doctor or the police, or who did that?

WITNESS: I sent immediately for Mr. Weiklejohn, and went myself to the police.

CROWN COUNSEL: Were you there when the body was examined by the two medical witnesses?

WITNESS: No, they had got back before me.

ADVOCATE FOR THE DEFENCE: How long have you known Mr. Kenyon?

WITNESS: About three years.

ADVOCATE FOR THE DEFENCE: On this particular evening that Mr. Kenyon was there, there was some discussion about his employees?

WITNESS: Yes, he told me he had cut one of his house-boys a month's wages for continually stealing milk, and found the milk that he had stolen through chasing a mouse in his store-rooms.

ADVOCATE FOR THE DEFENCE: There was also some conversation about a boy having turned over Mr. Kenyon with a knife?

WITNESS: Yes, that was some trouble he had with a herd boy who pointed a knife at him.

ADVOCATE FOR THE DEFENCE: Was there any mention made that night of another boy whom he had put in jail for a fortnight?

WITNESS: He did not mention that.

ADVOCATE FOR THE DEFENCE: Mr. Evans, generally, what name among the labour had Mr. Kenyon - a good or a bad name?

WITNESS: I never heard of any bad name. I think he was pretty good with his boys.

HIS HONOUR: I will read over your evidence, Mr. Evans:

"Ernest Evans, European farmer in Laikipia District. I remember Kenyon coming and spending the evening with me on the 8th July this year. He left my house to return home at 10 p.m. He took with him a lantern belonging to me. I saw him set off for his own farm, which was about a mile away. The next morning a native employed by me, Kimania, made a statement to me. I accompanied him to the place he pointed out to me. When I got there I found Kenyon's body about 100 yards from the bottom of a gully, hacked to pieces. This was about half a mile from my house. Nearby I found pools of blood and footprints. The body had been dragged about 100 yards. About 100 yards away from the body there were marks of a struggle. I had the body covered with branches and sent for a sheet. I sent immediately for Dr. Reikiejohn and went myself for the police. I was not present at the medical examination; the doctors got there before me."

In cross-examination: "I have known Mr. Kenyon for about three years. During the evening of the 8th July, Kenyon said he had found one of his boys stealing milk. He had immediately cut him one month's pay. He found the milk hidden through chasing a mouse. There was also conversation about a boy of his having pointed a knife at him; it was some trouble with a herd boy. I never heard that Kenyon had a bad name with his labour; he was very good with them."

Is that correct?

WITNESS: Yes.

HIS HONOUR: I do not know what your obligations are, but if you wish to leave, there is no reason why you should not leave; is not that so Mr. Howell?

CROWN COUNSEL: Yes.

Dr. Cunningham.

(The oath was administered)

CROWN COUNSEL: Robert Alan Cunningham is your full name?

WITNESS: Yes.

CROWN COUNSEL: You are a Colonel in the R.A.M.C., retired?

WITNESS: Yes.

CROWN COUNSEL: Are you in practice ?

WITNESS: Yes.

CROWN COUNSEL: As a medical practitioner ?

WITNESS: Yes.

CROWN COUNSEL: Do you remember on the 9th July accompanying Inspector Ash to Mr. Evans' farm ?

WITNESS: Yes.

CROWN COUNSEL: Did you find there the body of Mr. Kenyon ?

WITNESS: Yes.

CROWN COUNSEL: You knew him before, I think ?

WITNESS: Yes.

CROWN COUNSEL: Did you make an examination of the body ?

WITNESS: Yes.

CROWN COUNSEL: Did you make any notes at the time ? You may look at them. Would you tell the Court shortly what injuries you found the deceased man was suffering from ?

WITNESS: Shall I give a complete list ?

CROWN COUNSEL: I think the principal ones would be sufficient, such injuries as are likely to have caused death.

WITNESS: I found very numerous wounds on the head and body and limbs. The wounds on the head caused death. There were three very severe wounds on the head, one almost severing the top of the skull from the rest of the head. This wound alone could have caused death. Very great violence must have been used.

CROWN COUNSEL: Apart from the head was there any wound in the chest ?

WITNESS: There was a punctured wound in the left side of the chest, probably caused by a stab.

CROWN COUNSEL: A stabbing wound ?

WITNESS: Yes.

CROWN COUNSEL: How far did that penetrate ?

WITNESS: About 1 1/2 inches; it penetrated the lung.

CROWN COUNSEL: What about the arms ?

WITNESS: Both arms were badly wounded; the right hand was almost severed from the arm just above the wrist.

CROWN COUNSEL: Were there any serious wounds on the leg ?

WITNESS: There were deep wounds on both legs. There was a deep wound about 3 inches long at the back of the right knee, and there was one about 3 inches long going to the bone in front of the left shin, and a rather deep wound on the front of the right leg extending to the bone. There were numerous smaller wounds.

CROWN COUNSEL: Let the witness see those two swords, exhibits 1 and 2. I think you said that in your opinion the head wounds were the cause of death ?

WITNESS: Yes.

CROWN COUNSEL: In your opinion, could these weapons (exhibits 1 and 2) have caused the wounds you saw ?

WITNESS: Yes.

CROWN COUNSEL: Were there any other wounds which might have been caused by any other kind of weapon - a stick or a club or anything of that kind ?

WITNESS: There was a contused wound in the head that might have been caused by a stick.

CROWN COUNSEL: I think you afterwards examined Accused No. 1's foot ?

WITNESS: Yes.

HIS HONOUR: What is Hugo; perhaps the Colonel could identify him. Do you remember which ? The taller of the two ?

WITNESS: Yes.

CROWN COUNSEL: What was the nature of the injury to his foot ?

WITNESS: It was an incised wound.

CROWN COUNSEL: In the instep ?

WITNESS: On the outer side of the right foot.

CROWN COUNSEL: Did he give an account of how he had received it ?

WITNESS: He stated that it had been caused by a milk tin falling on the foot; I understood that was his statement.

CROWN COUNSEL: He did not make it to you? I am sorry, I thought he made it to you. Is it a possible explanation of the wound to say that it might have been caused by a tin falling?

WITNESS: In my opinion, it was caused by a sharp cutting instrument, and could not have been caused by a tin falling on it.

CROWN COUNSEL: Could it have been caused by one of those swords?

WITNESS: Yes.

CROWN COUNSEL: Was it in such a position that it could have been self-inflicted by a person aiming a blow at somebody else and missing?

WITNESS: Yes.

ADVOCATE FOR THE DEFENCE: I have no questions, Your Honor.

HIS HONOUR: I will read over your evidence:

Robert Alan Cunningham, Colonel in the R.A.M.C., retired. I am in practice as a medical practitioner. I remember on the 9th July last accompanying Inspector Ash to Mr. Evans' farm. I found there the body of Mr. Kenyon, whom I had known before. I made an examination of the body. I made notes at the time to which I refer. I found very numerous wounds on the head and body and limbs. The wounds on the head caused death. There were three very severe wounds on the head, one almost severing the top of the skull from the rest of the head. This wound alone could have caused death. Very great violence must have been used. There was a punctured wound on the left side of the chest, a stabbing wound. It punctured the lung. Both arms were badly wounded. The right fore-arm had a wound which almost severed the hand, almost cut it in two. There were deep wounds on both legs. There was one at the back of the right knee about 5 inches long. There was a wound about 3 inches long going to the bone on the left shin. There was another deep wound on the right leg penetrating to the bone. There were numerous smaller wounds. Exhibits 1 and 2, those native swords, could have caused the wounds I saw. There was a contused wound on the head that might have been caused by a stick. I afterwards examined Mugo's (that is the accused No. 1) foot. On the outer side of the right foot there was an incised wound. It could not have been caused by a tin falling on it, the foot. It could have been caused

CROWN COUNSEL: With regard to those two swords which are exhibited, No. 1 I think was given to you by Mr. Booth?

WITNESS: The longer and cleaner of the two was given to me by Mr. Booth on the 9th.

HIS HONOUR: Is that exhibit 1?

WITNESS: Yes. Exhibit 2 was given me by an assistant of mine named Chuma.

CROWN COUNSEL: Is he a police 'askari'?

WITNESS: He is not.

HIS HONOUR: How do you mean "an assistant"?

WITNESS: If I have a serious case I have several men - civilians, unpaid.

CROWN COUNSEL: You were not present when exhibit 2 was found?

WITNESS: No.

CROWN COUNSEL: Was it given to you in the presence of the accused or not?

WITNESS: I could not really remember, Sir.

CROWN COUNSEL: Did you find that 'safari' shirt and shorts somewhere?

WITNESS: The shorts with the black stitches on, with the 'safari' shirt were damp and I found them on the afternoon of the 9th in deceased's kitchen. They were hanging on the line as if for the purpose of drying.

CROWN COUNSEL: Only the shirt was identified.

HIS HONOUR: Exhibit 9 is the shorts with black cotton stitches. Exhibit 8 you found on the afternoon of the 9th in deceased's kitchen.

CROWN COUNSEL: That brown 'kanga' (exhibit 7) had stains on it which appeared to you were possibly blood?

WITNESS: On the right sleeve.

HIS HONOUR: You sent it to the Government Analyst?

WITNESS: Yes.

CROWN COUNSEL: And received back this report that will be exhibit 10. The report shows that the 'kanga' is the only exhibit which is positive.

WITNESS: Human blood.

CROWN COUNSEL: Positive tests mean human blood.

HIS HONOUR: Is a case recently it could not be said whether it was human blood or not.

CROWN COUNSEL: The Government Analyst is here.

HIS HONOUR: I do not think it is necessary; I speak subject to correction, but that positive test would necessarily ...

CROWN COUNSEL: I think the wording of this makes it clear what it does mean.

HIS HONOUR: I think it is quite clear now. You received back this report together with the 'kanu'?

WITNESS: With the 'kanu', yes Sir.

ADVOCATE FOR THE DEFENCE: I have no questions.

HIS HONOUR: I will read your evidence.

"Albert Ash, Inspector in charge of the police station at Mumuti. In July I went to Evans' farm where Kenyan had been murdered. This is the sketch I made of the scene. There were traces of the body having been dragged about 100 yards. At the place from which the body had been dragged there were traces of a struggle. This 'runu' (exhibit 5) was found about 80 yards from the body. There were two patches of blood where the 'runu' was found. Nearby on a small embankment I found traces of persons as if they had been sitting in the grass. I went to the deceased's house when I finished the examination of the gully. I saw the first accused. He had a piece of clean cotton wool on his foot. I asked him what had happened to his foot. He said he had cut it the previous day with the edge of a kerosene oil tin. I was present when the cut was examined by the doctors. Exhibit 1, that is the longer sword of the two, was given to me by Mr. Booth on the 9th, and exhibit 2, which is the other sword, was given to me by my assistant Chuma. I was not present when exhibit 2 was found. Exhibit 3 (shorts with black thread) and exhibit 6 I found on the 9th, afternoon, in the deceased's kitchen. They were damp and hanging on a line. Exhibit 7, 'kanu', had marks on it as if blood. I sent it to the Government Analyst and received exhibit 10, a report from the Government Analyst which shows that there is blood, human blood. I received back the report with the 'kanu'.

Is that correct?

WITNESS: That is correct, Sir.

CROWN COUNSEL: That is my case, Your Honour, except the statements.

HIS HONOUR: Any of the witnesses who have been called are at liberty to go back.

As I have sat longer than usual, I will adjourn until 2.30 p.m.

The Court resumed its sitting at 2.30 p.m.

CROWN COUNSEL: The two Accused made statements before the Magistrate.

The first Accused said: "I did kill Mr. Kenyon. I killed him about 10.30 at night and went back to the house about 12 midnight. On Tuesday the Inspector of Police came and arrested me. I did not know that he would know that I had done it. Ngari and I and the witness Njugi killed Mr. Kenyon."

HIS HONOUR: Did you make that statement to the Magistrate?

FIRST ACCUSED: Yes.

HIS HONOUR: Is it true?

FIRST ACCUSED: Yes.

HIS HONOUR: Is there any manner in which you desire to alter it or add to it?

FIRST ACCUSED: No.

CROWN COUNSEL: Accused No. 2 states: "I killed Mr. Kenyon. I did not want to kill him. I went with Kiarie and Njugi to kill him. They invited me." That is the case for the prosecution.

HIS HONOUR: I will ask the first accused, did anyone induce you to make that confession?

FIRST ACCUSED: No.

HIS HONOUR: Had you any object in making that statement other than speaking the truth?

FIRST ACCUSED: It was useless to ~~xxxxxxx~~ hide.

HIS HONOUR: The first Accused admits having made the statement and adds that he does not wish to alter it or add to it, and that nobody induced him to make it. There is no object in making it except to speak the truth, concluding that it was useless to hide.

The second Accused, you have heard the statement counsel has read over as having been made by you?

SECOND ACCUSED: Yes.

HIS HONOUR: Did you make that statement?

SECOND ACCUSED: Yes.

HIS HONOUR: Do you wish to alter it or add to it?

SECOND ACCUSED: No.

HIS HONOUR: Did anyone induce you to make that statement?

SECOND ACCUSED: No.

HIS HONOUR: Did you have any motive in making that statement except to speak the truth?

SECOND ACCUSED: No, only because it was true.

HIS HONOUR: The Accused admits having made the statement that Counsel has read out. He says nobody induced him to make it, that he had no motive in making it but to speak the truth. Is that correct?

SECOND ACCUSED: Yes.

HIS HONOUR: Mr. Allan, have you any witnesses?

ADVOCATE FOR THE DEFENCE: I have no witnesses, Your Honour.

CROWN COUNSEL: I do not propose to address the Court again, Your Honour.

ADVOCATE FOR THE DEFENCE: In view of the statements made by the Accused, I feel it would be a waste of time for me to address the Court.

HIS HONOUR: Will you tell the Assessors that in the Laikipia District on the night of the 8th July, Monday, a European farmer of the name of Kenyon, who had been farming in this country for some three years, was fatally done to death in a gully somewhere about midway between the farm of Mr. Evans and Mr. Kenyon's farm. On the night in question, Mr. Kenyon, who had been dining with Mr. Evans, was returning to his homestead and for the purpose borrowed a lantern from Mr. Evans. On his way he was waylaid by some person or persons and, one way or another, was butchered to death. The only parallel, the only murder of a similar kind, I can remember having happened in this country was the murder of Mr. Drought, a farmer, I think, in the Londiani - Mau Summit neighbourhood, who was a partially paralysed man - paralysed to the extent that he had not the full use of his hands - in the year 1917 while he was alone on his homestead, his brother being away at the war. To the best of my recollection, he was attacked by three of his native servants and killed. This particular case, judging from the character of the wounds described by both doctors and taking into consideration the unsuspected nature of the attack and the defenceless attitude of the victim, would seem to be at least as brutal a murder. What you and I are concerned with here is who are the person or persons who committed the murder. You are there to record your opinions; it is for me to pay every respect, after considering your opinions, to those opinions, but I am in no sense bound by those opinions. The full responsibility in arriving at a conclusion remains with me.

The two accused who are before you have made statements, both at the commencement of the case and at the conclusion of the case when statements which they made before the committing Magistrate were read over and explained to them. In those statements

they admit having killed Mr. Kanyon. Those statements, if you believe them, are good evidence. If there were no other evidence in the case it would be competent for you and me to act on those statements, provided that there was no reason to believe that those statements were false, provided that there was nothing to suggest the incredibility of such statements, provided that those statements had not been made under any inducement or, for instance, provided those statements had not been made from fear or simplicity or under a delusion. You heard me question the accused merely for the purpose of ascertaining whether those confessions were voluntary confessions made by them. They persisted in their statements and, having applied these tests that I have mentioned to those confessions, there does not seem to be any ground for believing that they do not represent the truth.

In addition to the evidence contained in those confessions, there is the evidence of Njugi. Now whether Njugi was present and took part in the murder on that particular night, or whether he was not, whether he took no part, his evidence is competent evidence, is good evidence. To introduce greater caution into the case, I thought it would be right to assume that Njugi knew more about the murder than he cared to state. He is not on trial before you. The impression left in my mind - whatever the impression left in yours - was that to some degree he was a party to what took place that night. Now otherwise would he have lent his sword to one of the accused that night? There was nothing to suggest that the two accused men on that night, as distinct from any other night, should have gone to Mr. Weiklejohn's farm armed with swords. Taking into consideration the previous conversations during which (according to Njugi) he was unsuccessfully invited to take part in the killing of Mr. Kanyon; taking into consideration the fact that he himself absented himself for some time when he went to Mr. John's farm ~~where~~ he ate potatoes as you heard the evidence; with his friend; taking into consideration that that night, on his return at about the hour of 9.30, shortly after going to bed (according to his evidence) he got up and the evidence the "beating of a box", he got up and went to the kitchen, and there found the two accused acting in this more than highly suspicious manner, washing themselves and washing their swords, with that basin (exhibit No. 4) with blood and water in it; taking into consideration, further, that his evidence was that he hid the sheath which belonged to his sword in the manure in the 'boma'; taking all these factors into consideration, it seems highly probable that, as I said, to some extent Njugi was a participant in the terrible events of that night. Nevertheless, as I have said, assuming that to be so, his evidence is quite good evidence, but it is a rule that before you could act safely on such evidence, you would have to have it corroborated in material

details. These details, if you believe the statements made by the accused persons - or, I should say, that corroboration of material points is to be found in the statements of the accused men themselves. Further, there is the corroborative detail of this particular 'kanzu' that was produced which, on a material point connecting the accused No. 1 with the murder, corroborates the evidence of Njugi. Mr. Ash, the Inspector of Police, found this 'kanzu', and this 'kanzu' was sent to the Government Analyst. Njugi in his evidence had said that the 'kanzu' was the property of Kiarie. Mr. Ash found what he believed to be stains of blood on the 'kanzu'. The 'kanzu' came back from the Government Analyst, and the Government Analyst testified in his report that those marks, those stains on the 'kanzu', were the stains of human blood.

As regards any motive for this particular murder, if you find without any reasonable doubt that the accused persons committed the murder, assuming those statements as regards the cutting of pay to be true, that would not afford any excuse in law. According to the evidence of Njugi, the cutting of pay was because of the theft of milk by one of the accused, which, according to Njugi, the accused admitted to be correct - the accused was Kiarie.

Those are the facts of the case, and it is for you to advise me what your opinion of the case is.

FIRST ASSESSOR: I find both the Accused guilty. The excuse about the wages is not sufficient. Everyone knows where to go if his pay is cut or if he was assaulted - to the District Commissioner or the Police Officer.

HIS HONOUR: I will repeat what you said:

"I find both the Accused guilty. The excuse about the wages is not sufficient. Everyone knows where to go if assaulted or if his wages are cut - to the District Commissioner or the Police."

Is that correct?

FIRST ASSESSOR: Yes.

SECOND ASSESSOR: Both Accused have not denied before you that they did the killing and we are all angry just the same as you are. They had no reason for killing.

HIS HONOUR: I will repeat what you said:

"The Accused persons have not denied having done the killing and we Elders are just as angry as the Judge. There was no reason for the killing."

Is that correct ?

SECOND ASSESSOR: Yes.

THIRD ASSESSOR: They have done wrong. That is all.

HIS HONOUR: I will repeat what you have said

"They have done wrong. That is all."

Is that correct ?

THIRD ASSESSOR: Yes.

HIS HONOUR: The Accused persons have been charged with having murdered a Mr. Kenyon, a European farmer, resident in the Laikipia district. I summed up the case at some length to the Assessors, who are unanimous that the Accused are guilty. The Accused on more than one occasion during the trial admitted their guilt, and there is no reason whatsoever for my doubting that they confessed their crime for any reason other than a desire to speak the truth. There is, further, no reason for thinking that they were induced by anyone to make false confessions; in fact they specifically denied such being the case. In addition to their admissions of guilt, there is the evidence of the witness Njugi which speaks to their guilt. The evidence of Njugi is corroborated by the statements of the Accused, and the statements of the Accused corroborate the evidence of Njugi. So, assuming Njugi to be an accomplice, the case against the Accused I find to be conclusive of their guilt. The murder was a particularly brutal and cowardly one on a defenceless man at night when he could have had no apprehension of an attack. The murderers virtually hacked him to pieces. It was deliberately considered previously and there is no extenuating circumstance of any kind in my opinion. As one of the Assessors truly remarked, assuming that the deceased had cut the wages of one of the Accused, the doors were open to the aggrieved party.

I find both of the Accused guilty of murder, and I sentence them, each of them, to be hanged by the neck until he is dead, and I notify him that he has 30 days in which to appeal.

You may remove the prisoners.

Copy.

LAIKIPIA FARMERS' ASSOCIATION,
RUMURUTI.

8th September, 1929.

The Resident Commissioner,
Nairobi.

Sir,

At a Committee Meeting of this Association attended by the Public, I was requested to ask if you would ask Government to have Kikuyu, who know the condemned men in the Kenyon murder case, to witness the execution, as it is known that Natives have expressed their opinion that condemned Natives are never hanged.

I am, Sir,

Yours faithfully,

(Sd.) R.G.Cross.

Hon. Secy.,

100

We, the undersigned residents of Laikipia District, respectfully petition the Honourable the Colonial Secretary that the natives guilty of the brutal murder of Mr. Ernest Kenyon be publicly hanged at Rumuruti, and their native village heavily fined:

R.H. Wake Bowell
L.F. Pohl
D.M. Wake Bowell.
W.F. Forrester.
P.G. Hall.
J.L. Grimbeck.
E.H. Grimbeck
H. Hill.
Mr. Tucker.
H.G. Plout.
Mrs. A. Reid.
Thomas Henderson.
E.T. Nicholas.
D. Kenyon.
G. Sandback Baker.
K.M. Tucson.
B.C. Hudson.
A.K. Tomlison,
C.A. Forrester.
P.T. Barber.
Col. T.
H.E. Barber.
J.L. Cotter.
T.M.K. Tomlison.
G.G. Dry.
E. Plaut.
A.E. Ross.
K.W. Cunningham.
R.T. Cunningham
H.M. Cotter.
P. Mathews.
G.C. Aggett.
P.M. Daniel.
P. J. ...
P.L. ...
P.W. Muller.
W.L. van Dyke.
F.J. Booth.
E.F. Hall.
C. Luxford.
L.J. King.
H. Vigeon.
C. Salau.
C.A.B. Richardson.
E. Richardson.

Roderick Ward.
H.L. Cunningham.
H.O. White.
A. Remton.
J.R. Smith.
Mrs. C.A. Smith
G. Colvile
T. Cotter.
H.J. Davel.
J.J. Dry.
J.H. Luies.
J.A. Luies.
T. Luies.

British Settler's Body Mutilated.

(Reuter's Telegram).

Nairobi, Wednesday.

A British settler named Ernest Kenyon who owned a farm in the district of Thomson Falls, was brutally murdered on Monday night. Three natives have been arrested. When the body was found the head was smashed in, an arm severed, both legs were broken, and there were numerous other wounds. The district where the outrage took place is in a rather wild and desolate part of the country, where there are not many white settlers.

Copies Sent 6/18. 10 AUG 1908

1929

Rodgers

No.

1582

SUBJECT

C0533/890

The Bank, Orders Regulation
(Amendment) Ordinance 1929

Previous

15325/28

Subsequent

17361/31

See 16239/30

(legitimacy order)