

1938

Kenya

No. 38386

SUBJECT.

Murder of Mr. J. White at Njoro

and enquiry by his mother regarding cremation

Previous

Subsequent

at Hudson  
Kronstadt

! Mrs. White  
Engineer, killed in the body of her son  
who was stabbed to death at Nyeri can  
be cremated & sent home.

There has been no report that any  
official by the name of White has been  
killed in Kenya recently. It is to be  
presumed therefore that Mrs. White is  
a private individual. Many thousands  
of ~~and~~ private individuals must die in Kenya  
each year, & it would be unworkable were  
we asked to do things such as arrange  
for cremation every time it happened. The  
normal thing to do would be for Mrs. White  
to communicate either with a friend of her  
husband or with a solicitor in Kenya.  
The EAT & Co. might be able to put Mrs.  
White into touch with a solicitor, &  
even perhaps give her information about  
the possibilities of cremation.

? Transfer accordingly.

Colby White  
9/5

Colonel Knaggs of the EAT & Co. has seen  
over the telephone that he remembers a  
case recently at which a cremation was  
arranged "by courtesy" of the "Indian Community"  
at the Indian crematorium. Report from

That



that he believes that there are no  
possibilities of exhumation; ~~as~~ he does not  
know how early permission can be  
obtained for the Indian exhumation.  
Moreover the Indian method of exhumation  
is such that to collect ashes is not  
possible. So ~~that~~ in effect it is not  
possible to arrange what Mrs White  
wishes.

Drafts herewith after Mr Pathan had spoken.

Clothes White  
9/5

2 to Mrs White (1000) 10 MAY 1958

5. J White  
Inquires whether his son was insured by his  
employer and whether there is any other source of  
compensation.

A Mrs Pathan, the sister of the  
dead Mr White, called on 11/5/58.  
She said that her husband had ~~been~~  
been wished to have Mr White  
reburied, but as a burial instead, and  
she would like to know what  
facilities (except) existed in Kenya.  
After consulting Mr Beetham, Mr  
Patt, & Dr A.R. Paterson (by phone)  
it appears that it was unlikely  
things possible for embalmment

\* The question of  
cost did not  
trouble her; I  
gathered that  
the family was  
well off, though  
Mrs Paterson  
is not employed  
in Nos 1 & 3.

to be feasible in ordinary circumstances,  
but that in view of the fact that the White  
had been almost certainly seen buried  
for a week it was quite out of the  
question.

It was suggested to Mr  
Pathan that it might be possible to  
meet Mrs White's wish for her son to  
be buried in England by having the  
casket examined & placed in an air-  
tight container & brought home to  
England in this way.

Mrs Pathan  
thought this was a best<sup>x</sup> and Mrs  
White is accordingly writing direct  
to Kenya about the exhumation —  
both to Govt & to her solicitors.  
It will therefore perhaps be best to  
enclose copies of the ~~report~~ cover  
leaf explaining what the situation  
has altered since No 2 was posted.

No 3 → A copy should be enclosed  
in the leaf for the Govt's obsn. The  
answer to the first two questions is 'No';  
and I imagine it is to the third  
question too, but that might also well be  
checked.

Draft for encn herewith.

Clothes White

9/5



KENYA  
No. 511



59  
GOVERNMENT HOUSE  
NAIROBI  
KENYA

RECEIVED  
C. O. LEGY

8 September, 1958.

Sir,

In accordance with the instructions contained in Mr. Thomas' despatch No. 762 of the 18th July, 1954, I have the honour to transmit two copies of the transcript of the shorthand notes taken at the trial of Wakahu s/o Kihinya and Koine s/o Rutinu, who were charged before the Supreme Court of Kenya in Criminal Case No. 75 of 1958, with the offence of the murder of Jack White contrary to Section 186 of the Penal Code.

2. The former of the above accused was found guilty of manslaughter under Section 188 of the Penal Code and was sentenced to 12 years imprisonment with hard labour. The latter was acquitted and discharged.

I have the honour to be,

Sir,

Your most obedient, humble servant,

*Adrian DE*

GOVERNOR'S DEPUTY.

THE RIGHT HONOURABLE  
MALCOLM MACDONALD, M.P.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET, LONDON, S.W. 1.

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IN HIS MAJESTY'S SUPREME COURT OF KENYA  
SESSIONS HELDEN AT NAKURU

25th July, 1938

B E F O R E

HIS HONOUR MR. JUSTICE THACKER

CRIMINAL CASE NO. 75 OF 1938

R E X

versus

- (1) WAKABU WA KIBENYA
- (2) KOINE YA RUTIPU

Transcript of Shorthand Notes taken by J.S. Templeton,  
Official Shorthand Writer to H.M. Supreme Court of Kenya.

THE HONOURABLE THE ATTORNEY GENERAL (MR. V. MARRAGIN) -  
with him MR. A. PHILLIPS, CROWN COUNSEL, appeared for  
the Prosecution.

MR. LEAN appeared for the First Accused.

MR. SAVILLE appeared for the Second Accused.

Charge read and explained to both accused.

P L E A S

First accused: I don't admit killing him.

Second Accused: I was not present when the killing took  
place. I have been wrongly arrested.

Plas of Not guilty entered.

The following assessors were chosen:

- (1) Millman Karioki
- (2) Stephen Karioki
- (3) Isaiiah Mwaniki

HIS HONOUR MR. JUSTICE THACKER (to Assessors): The first  
Accused is named Wakabu wa Kibonya and the second

Accused is named Kaine wa Mutinu and they are charged with murdering on or about the 2nd day of May of this year, in the Rift Valley Province, one Jack White. The definition of murder in the Penal Code of this Colony is as follows:-

Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder."

One of the essential ingredients of this charge is that there must be the malice aforethought in addition to the unlawful act, and the expression "malice aforethought" may best be translated to you by wicked deliberate intention to kill or to cause grievous harm provided of course, in the latter case, that death results from that harm. Now you will hear many witnesses and to all of them you must pay the closest possible attention. That is your bounden duty, and after the whole of the evidence has been heard I shall speak to you again summing up the facts for you and telling you about such of the Law as is necessary for you to understand. You will not form your opinions until you have heard the whole of the evidence and you must disregard anything that you have heard about this case. During the course of the trial you must not speak to anyone about it - certainly to none of the witnesses; in fact, no one at all. You are at liberty to discuss the case amongst yourselves but that is as far as you can go.

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THE HONOURABLE THE ATTORNEY GENERAL ADDRESSES  
ON BEHALF OF THE CROWN:

---

May it please Your Lordship, members of the assessors, the two accused on the 2nd of May of this year were working on a farm belonging to Captain Harries 17 miles away from Nakuru. Also working on that farm as a Manager was the deceased by the name of Jack White. He was a young man some 25 or 24 and had been working there for about 5 years. His particular job on the farm was to look after the Butchery. On the day in question the two accused were also supposed to be working at the Butchery.

At about 7 o'clock in the morning the deceased got on his horse and rode down in the direction of the Butchery and on arriving somewhere in the vicinity of a place you will hear described as the Piggery he dismounted from his horse and called to someone to hold the horse. The person who was given the task of holding the horse was No.1 accused. After inspecting the piggery the deceased walked over in the direction of the meat store and No.1 accused also moved with the horse he was holding nearer to the meat store. At a spot some 10 or 15 feet away from the meat store the deceased commenced to reprove No.1 accused and another man named Njeroge for some breach of duty that had taken place the day before. Njeroge is alleged after his reproof to have left and gone in the direction of the kitchen and the discussion or quarrel or reproof, or whatever you like to call it, between the deceased and No.1 accused continued, and reached the stage when the deceased demanded the Kipande of No.1 accused in order to dismiss him. No.1 accused refused to hand over his kipande saying that he



had been engaged by Captain Harries the owner of the estate and he only could dismiss him, and when he made this remark the deceased slapped him with his open hand. The Crown's case is this: that the moment No.1 accused was slapped on the face he dashed off in the direction of the Butchery a distance of some 40 to 50 feet, that inside the Butchery close to the door he picked up one of the Butchery knives. No one actually saw him pick up the knife because the witnesses whom the Crown intend calling before you were all outside, but what they will say is that he dashed in the direction of the Butchery door without a knife in his hand and that when he turned round at the Butchery door when they next saw him - a matter of seconds only - he had a knife in his hand; and the Crown will produce in due course the knife which they allege the accused had in his hand. Following closely behind No.1 accused was the deceased and the witnesses will tell you that the moment the deceased arrived at the door of the butchery he was struck by No.1 accused with the knife. This, however, was not the fatal wound as apparently the deceased fended off this blow with his arm and in doing so the arm was wounded. The deceased and accused No.1 then grappled together and the struggle continued outside the Butchery between the Butchery and the Kitchen. It would appear that deceased was getting the better of the struggle when No.2 accused joined in the fight. He had been in the vicinity the whole time but had taken no part in the struggle up to this moment and the First Accused would appear to have been getting the worst of it. The first action of note that was noticed about No.2 accused was that he arrived on the scene with a piece of firewood with which he was going to strike the deceased. The firewood was, however, taken away from him by Njerese. Accused No.2, deprived

of his weapon, then get hold of the deceased round the waist and then he shifted his grip a bit lower down round the legs, and the case for the Crown is that he was doing this with the intention of making it possible for No.1 accused to strike the deceased with the knife in the vicinity of the heart from which wound the deceased died almost immediately. The moment he was struck the second accused left and ran away.

Now all these facts will be deposed to you by three native women. They were in the immediate vicinity having gone there, as they always did, for the purpose of cleaning skins which they got from the Butchery, and they will tell you that they had a clear view of everything that happened.

Those shortly are the facts of the case and if you are satisfied that the two accused intended to do at least grievous bodily harm to the deceased the Crown will ask for the return of a verdict of murder. You members of the Assessors will of course take your Law from the learned Judge in due course, but in order that you should get the picture of the Crown's case clearly before you I will just tell you that it is the submission of the Crown that in Law it is no defence to a charge of murder for No.2 accused to tell you that his was not the hand that struck the fatal blow. If he was there assisting No.1 accused to strike that fatal blow he will in Law be equally guilty with No.1 accused. My authority for that statement is Section 32 of the Penal Code which I don't intend to read. Your Lordship is well aware of it and I do not suppose the Assessors would understand it.

There are two other points which are matters of mixed Law and fact that the members of the Assessors will have to bear in mind. The first is the question of self defence and at this stage all that I will say about that

is that whereas the Law permits a man to defend force with force you are not permitted because a man slaps you in the face to rush off and seize a dangerous weapon and proceed to kill him. My authority for that bald statement Your Lordship will find in Section 18 of the Penal Code and I will leave that question of law there for the moment.

The other point which I must draw your attention to is that of provocation and I refer Your Lordship to sections 191 and 192 of the Penal Code. I will put the case for the Crown bluntly on that point and it is this: that the provocation must be such and so serious as to deprive the accused person of his natural self control. In other words it must be of such a serious nature that an ordinary person would become so incensed and enraged by hearing those words or receiving the slap or whatever the insult may be that he would lose his self control. The case for the Crown on this point is that even assuming the deceased did strike No.1 accused with the flat of his hand, under the particular circumstances of this case on this day it certainly was not sufficient provocation to justify No.1 accused in running away and fetching a knife and killing the deceased.

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THE CASE FOR THE PROSECUTION

JOHN PATRICKSON sworn:

EXAMINED BY MR. HARRAGIN:

- Q. 1. Your name is John Patrickson? -- A. Yes.
- Q. 2. What are you by profession? -- A. An Engineer.
- Q. 3. You are stationed at Nakuru? -- A. Yes.
- Q. 4. At the request of the Police do you remember doing something for them on Monday May 16th? -- A. Yes.
- Q. 5. Where did you go to? -- A. To a Butchery on Captain Harries' farm at Njoro.
- Q. 6. Who were you in company with? -- A. Mr. Palfreman.
- Q. 7. He was the Superintendent of Police here? -- A. Yes.
- Q. 8. Did he point out a certain area to you? -- A. He pointed out buildings and the position of various things.
- Q. 9. And did you make anything from that? -- A. Yes I actually surveyed them and plotted them on a plan.
- Q. 10. Is this the plan? -- A. Yes.  
(Plan put in as Exhibit 1)
- Q. 11. From that plan did you run off 6 prints? -- A. Yes.
- Q. 12. Is this one of them? -- A. Yes.

CROSS-EXAMINED BY MR. SAVILLE

- Q. 13. Is this piece of paper at the end of the plan an addition you made afterwards? -- A. That is an addition supplied by Mr. Palfreman.
- Q. 14. And this is drawn to scale is it? -- A. Yes.

NO CROSS-EXAMINATION BY MR. LEAH

NO RE-EXAMINATION

ARTHUR HERBERT FIRMIN sworn:

EXAMINED BY MR. HARRAGIN:

- Q. 15. Your name is Arthur Herbert Firmin? -- A. Yes sir.
- Q. 16. And what are you? -- A. Second Grade Assistant Inspector of Police.

- 14
- 5 -
- Q.17. Do you remember on 23th May going anywhere? -- A. Yes.
- Q.18. Where did you go to? -- A. I went with Mr. Palfreman to the farm of Captain Harries at Njoro.
- Q.19. And when you got there what did you do? -- A. I took some photographs of positions pointed out to/by Mr. Palfreman.
- Q.20. Having taken these photographs what did you do? -- A. I returned to Nairobi with the photographs and there developed and printed them.
- Q.21. Do you now produce those photographs? -- A. Yes sir. These are 4 sets of the photographs I took.  
(4 sets of photographs put in as Ex.9)
- Q.22. The first set is what you call the panorama? -- A. Yes.
- Q.23. Whilst you were there was a hut pointed out to you by Mr. Palfreman? -- A. Yes sir.
- Q.24. Will you show us which hut it was? -- A. There were various huts.
- Q.25. Did you see on that day a native woman? -- A. Yes sir.
- Q.26. Do you know her name? -- A. Agnes.
- Q.27. Was her hut pointed out to you? -- A. Yes.
- Q.28. Can you point that out to us on the photograph? -- A. Yes sir. (Witness indicates)
- Q.29. In addition to those photographs did you bring any others? -- A. Yes.
- Q.30. Where did you get those from? -- A. They were handed to me by Kodaks at Nairobi.
- Q.31. And did you print them? -- A. From the negatives I printed 4 sets.
- Q.32. And are those the 4 sets you printed? -- A. Yes sir.

CROSS-EXAMINED BY MR. SAVILLE

- Q.33. Could you point out Agnes' hut in Photograph No.9? -- A. You can just see it in the distance.
- Q.34. And the next one to it - No.8 - can you point out which is the butchery and which is the kitchen? -- A. Yes. (Witness indicates)

15  
Q.35. The kitchen is the building with the corrugated iron roof? -- A. Yes.

Q.36. Will you tell us what height you had the camera when you took that photograph No.87 -- A. At my own eye level.

NO CROSS-EXAMINATION BY MR. LEAN

NO RE-EXAMINATION

JOHN ANTHONY PALFREMAN sworn:

EXAMINED BY MR. HARRAGIN:

Q.37. Your name is John Anthony Palfreman? -- A. Yes sir.

Q.38. You were Assistant Superintendent of Police in charge of the Nakuru Police on 2nd May? -- A. Yes sir.

Q.39. On that day did you receive any message? -- A. I did.

Q.40. At about what time? -- A. About 9.55 a.m.

Q.41. In consequence of that message what did you do? --

A. I gave certain instructions to Assistant Inspector Pickwell to go to Captain Harries' farm at Hjera.

Q.42. And what did you do yourself? -- A. I collected Dr. Howell from the Native Civil Hospital and proceeded to Captain Harries' farm.

Q.43. And having got there what did you find? -- A. I found the dead body of Mr. Jack White whom I knew personally lying on its back slightly to the left with knees drawn up.

Q.44. Can you point out on any of these photographs where exactly you found the body lying? -- A. Just in front of the door to the left hand side of the butchery (Witness indicates).

Q.45. Did you yourself take a photograph of the body as it lay there? -- A. Yes sir.

(Photograph put in as Exhibit 8)

Q.46. Is that the photograph you took? -- A. Yes.

- Q.47. Where did you send it to be developed? -- A. House of George the Godak people.
- Q.48. And you say that photograph is a true replica of what you saw? -- A. It is sir.
- Q.49. Do you remember subsequently taking Mr. Patrickson to the spot? -- A. Yes sir.
- Q.50. And did you give him certain directions? -- A. Yes.
- Q.51. And did you point out various spots to him. -- A. Yes.
- Q.52. Will you look at exhibit 1 is that a plan of the area where you found the body -- A. That is correct.
- Q.53. Can you point out to His Lordship the spot where you found the body -- A. The spot where there is a circle with a cross.
- Q.54. Is the butchery also depicted on the plan? -- A. Yes.
- Q.55. And now having looked at the plan and having told us where the body was found can you say roughly the distance between the butchery door and where the body was found? -- A. About 16 feet sir.
- Q.56. You have told us how you found the body lying. What was the next thing that attracted your attention? -- A. Two hats sir.
- Q.57. Where were those two hats? -- A. As shown on the plan by two small circles.
- Q.58. Now in order to enable the Engineer to make this plan how did he know where to put those two circles? -- A. Because I myself replaced them on the ground where I had found them.
- Q.59. Will you tell us a little more about these two hats? -- A. The one close to the water tank was a black beret and the other one was a dirty greyish-green felt hat.
- Q.60. Is this the black beret. -- A. Yes.  
(Black beret put in as Ex-4)
- Q.61. And is this the felt hat? -- A. Yes.  
(Felt hat put in as Ex. 5)

- Q.63. Did you have certain photographs taken? -- A. Yes sir on 20th May. Assistant Inspector Pirmin took them.
- Q.64. And can you point out to His Lordship on one of those photographs where the hats were -- A. Yes sir, No.5 view of kitchen showing the position of the hats.
- Q.65. What is the building near the hats? -- A. That is the kitchen.
- Q.66. And the building behind the kitchen or to the left of the kitchen? -- A. That is a store.
- Q.67. Can you point out on the plan where the piggeries are? -- A. They are not marked on the plan but they are down at the right hand corner of the plan just about where it says "scale 1" = 20' "
- Q.68. It is not actually on the plan but that indicates the direction where the pig sties are? -- A. Yes.
- Q.69. Did you have put on the plan various huts belonging to particular people? -- A. Yes sir, four huts.
- Q.70. Will you point out to His Lordship on the plan? -- (Witness points out hut where the two accused lived)
- Q.71. How did you know that hut? -- A. It was pointed out to me by Njeroge and Captain Harries. There is another hut which belongs to one Nganga.
- Q.72. How does that hut come into the picture? -- A. It was where a witness will state she saw certain people running past.
- Q.73. But Nganga is not a witness? -- A. No sir.
- Q.74. And from Nganga's hut can you see Nyamosi's hut? -- A. Yes clearly.
- Q.75. And is that further explained by a photograph? -- A. Yes Photograph No.5 taken from the doorway of Nyamosi's hut on the 20th May.



Q.75. What else did you notice that would not be on the plan? -- A. Various spots of blood about the compound between the kitchen and the butchery.

Q.76. Take them one by one and tell us where you saw these spots and what you did about it. -- A. There was a spot close to the body which I took out of the ground. There were spots on the left hand side of the compound over by the water tank and various spots in the middle. Just inside the butchery door on the floor was a large clot of blood which I scraped up and placed in a tin in cellophane paper and close to the body I found a little block of wood with a spot of blood on it.

Q.77. There is only one important exhibit from a point of view and that is the Summit cigarette tin. --

A. Yes sir, that is the tin.

(Summit cigarette tin put in as Ex. 6)

Q.78. What did you do with that Summit tin? -- A. I handed it to assistant inspector Rickwell.

Q.79. And did you in due course receive that tin back? --

A. No sir.

Q.80. Did you notice anything wrong with the body? --

A. Yes sir, I saw a laceration on the inside of the left wrist and a wound in the left breast.

Q.81. How was the deceased clothed as to the breast? --

A. He had a cardigan jumper and inside that a pink shirt and inside that a white vest.

Q.82. Could you recognise these things? -- A. I could sir.

Q.83. Is that the cardigan? -- A. Yes sir.

(Put in as Exhibit 7)

Q.84. Is that the pink shirt? -- A. Yes.

(Put in as Exhibit 8)

Q.85. And is that the white vest? -- A. Yes sir.

(Put in as Exhibit 9)

- .86. Will you look at the jumper and point out any incision which corresponded with any wound you saw? -- A. The slight cut on the left arm of the jumper and the cut between the second and third buttons.
- .87. Did that cut which you have just referred to between the second and third buttons correspond with a wound which you saw on the body? -- A. It was not over the wound, actually it was below the wound.
- .88. From which you deduced what? -- A. That if the knife made that wound the jumper must have been pulled up at the time the wound was made and afterwards fell down.
- .89. Did you collect the clothes all together? -- A. Yes.
- .90. And did you make them into a parcel? -- A. They were handed to me by A. E. Fiskwall on 4th May and made into a parcel by me and sent to the Government Analyst including the boots and socks. I personally registered them and personally handed them to the Post Office.
- (Boots, trousers and socks put in as Exhibit 10)
- .91. After that did you see the Doctor examine the body on the scene? -- A. Yes sir.
- .92. Having found the body in that position what did you do next? -- A. I immediately started an investigation.
- .93. Subsequently did you come in touch with three Sandorobo women? -- A. Yes.
- .94. And did you go to the spot with them? -- A. Yes.
- .95. And did they point out to you a particular spot? -- A. They did sir.
- .96. Would you point out to the Court where that spot

is on the plan? -- A. They pointed out that spot marked X at the left hand corner of the kitchen.

Q.97. Standing on that spot could you see all the things you have mentioned between the butchery and the kitchen? -- A. Not everything sir. I could see the whole length of the butchery.

Q.98. And could you see the spot where deceased lay? -- A. Yes sir.

Q.99. Looking at Photograph No.6, will you explain that? --

A. That is taken from a point just behind the spot the sandorobo women pointed out to me and the spot pointed out to me is visible in No.6 photograph just to the bottom of that hill.

Q.100. From that spot could you see the butchery door? --

A. Yes sir.

Q.101. Outside the butchery door did you notice anything on the ground besides the blood spots you have told us about indicating a struggle of any sort? --

A. I noticed nothing sir.

Q.102. Supposing two people were struggling from the butchery door to a spot 16 feet nearer the kitchen could you see the fight from that spot? --

A. Yes sir.

Q.103. Did you do any other experiment? -- A. I did sir.

Q.104. In connection with whom? -- A. In connection with a woman named Agnes.

Q.105. What was that experiment -- A. About 7.30 a.m. I stood with Agnes 34 feet in front of her hut on a spot pointed out to me by Agnes. Inspector Acton went to the middle of the compound between the kitchen and the butchery and said in a loudish voice various sentences in Kiswahili. Agnes repeated them to me and repeated them correctly. I could hear Inspector Acton's voice plainly myself.

Q.106. What do you know about the remainder of the Exhibits?

A. On the 3rd May I met Constable Maingi with the two accused. He handed me a knife (put in as Exhibit 11). That I handed to <sup>Asst.</sup> Inspector Pickwell on the 4th May for forwarding to the Government Analyst. Also on the 4th May I proceeded to the Prison and I stripped No.2 accused and a native named Njeroge. No.1 accused's clothes were handed to me by Prison Warden Embus. These are the clothes of No.1 accused (put in as exhibit 12).

Q.107. What did you do with these clothes? -- A. I handed them to A.I. Pickwell on 4th May at 2.30 p.m. I didn't receive them back.

Q.108. Is that another bundle? -- A. Yes sir, the clothes I took from No.2 accused on 4th May. (Put in as Exhibit 13.)

Q.109. What did you do with these? -- A. I also handed these to A.I. Pickwell on 4th May.

Q.110. Do you remember taking A.I. Kirua to the scene? -- A. Yes sir on 26th May.

Q.111. And were the photographs which were put in by him taken on your instructions? -- A. Yes sir.

Q.112. Do you remember doing anything with the hats? -- A. I placed them in the same position to have the photographs taken.

Q.113. Did you yourself receive back any exhibits from the Government Analyst? -- A. I received back the clothes of the deceased under registered cover and the seals were intact.

Q.114. In the spot itself did you find any weapon? -- A. I made a search for a weapon but could find none other than kumi in the kitchen and a garden brush which is in the photograph No.3.

Q.115. How far is Captain Harries' house away from the scene? -- A. About 2500 feet.

COURT ADJOURNS FOR 10 MINUTES.

CROSS-EXAMINED BY MR. LEAH

Q.116. Mr. Palfreman can you tell me exactly how far is is from the butchery to the pig sties? --  
A. I cannot tell exactly.

Q.117. Can you tell me approximately -- . should  
think about 80 to 100 yards direct.

Q.118. How far is Agnes' hut from the butchery? --  
. About 180 yards.

Q.119. You say you were taken to a spot by the witness Agnes? -- A. I was.

Q.120. And that spot was approximately 54 feet from her hut? -- A. Yes in front and slightly to the right.

Q.121. And the photograph No.8 is taken from that spot? --  
. That is correct.

Q.122. I think you will agree she could not see anything material unless they came to the edge of the kitchen? -- A. You can see the doorway of the kitchen.

Q.123. And anybody standing at the doorway of the kitchen would only have to move a very small distance to the left and he would be out of sight? --  
A. Yes.

Q.124. You say you searched the vicinity of the kitchen and the butchery for a weapon? -- A. Yes.

Q.125. And you saw no weapon there, but in the butchery itself was there not a long bladed butchery knife? -- A. That is correct.

Q.126. With a blade approximately how long? -- A. Eight inches think.

- .127. Considerably longer than the knife exhibited here? --  
 . Yes.
- .128. Was the blade of that butchery knife very much broader than this blade? -- A. It didn't come to a point like that one.
- .129. I take it the knife was sharp and not blunt --  
 . Yes.
- .130. Was it a strong blade? -- A. Yes I should say quite strong.
- Q.131. Was it as strong a bit of steel as that? -- A. I am afraid I could not say.
- Q.132. That butchery knife is not in Court? -- A. No.
- Q.133. You have had considerable experience of natives of different tribes? -- A. To a certain extent.
- .134. Have you had much experience of the Wandoroboy? --  
 A. No.
- .135. Would you say as a general rule with native women of this Colony if any tragedy has taken place would they be inclined to remain standing there in silence or would they not be much more likely to shout or cry out? -- A. I should think they would <sup>possibly</sup> cry out as a general rule.
- Q.136. Would you not say "probably" instead of "possibly"?  
 A. I cannot say. I haven't had much experience of native women.
- Q.137. Apart from the pigsties shown on the plan was there anything else near the kitchen and butchery or any other place where other natives might be employed at that time such as the garden? -- A. Yes there is a vegetable garden more or less the same distance as the pigsties.
- Q.138. That is about 80 to 100 yards? -- A. Yes.
- Q.139. People working in the pigsties or in the garden would really have a better opportunity of

hearing what took place than the witness Agnes at her house? -- A. It depends whether they are inside the pigsties.

Q.140. When you carried out that shouting test with Agnes which direction was the wind? -- A. There was practically no breeze at all. We did it at 7.30.

Q.141. The conditions would be roughly the same with a person in the garden as Agnes' house unless there was a wind blowing? -- A. Yes.

Q.142. And Nyamoni's hut is probably considerably nearer than Agnes' hut? -- A. Yes.

Q.143. And there would be even more likelihood of a person at that hut hearing the shouts? -- A. Not inside, Agnes was outside.

Q.144. What would you say the distance from the butchery to Nyamoni's hut is? Approximately 80 feet? -- A. Much more than that. I should think 100 to 150 feet.

Q.145. You didn't try any shouting tests there? -- A. No.

Q.146. With regard to the body of the deceased was there very much blood about the clothing? -- A. A great deal on the trousers and a fair amount on the vest and shirt inside and a small amount on the cardigan.

Q.147. And what about the back? Was there any blood on the back at all? -- A. I don't think so.

(Witness indicates small smear on back of cardigan)

CROSS-EXAMINED BY MR. SAVILLE:

Q.148. You said Agnes pointed out a position some 54 feet away from her hut in front and to the right? -- A. Yes.

Q.149. That 54 feet, was it to the right or in front? -- A. It was practically to the right and mainly in front.

- .150. That long-bladed knife you found in the butchery - did you take any steps to have that tested for human blood -- A. No, because it was lying beside a piece of meat and had meat adhering to the blade.
- .151. Were there any other hats near to Nyamasi's hut? -- A. Yes there were a number.
- .152. Who did they belong to? -- A. Various natives employed on the shamba.
- .153. Do you know if any of them are occupied? -- A. I believe most of them are occupied.
- .154. How far would they be from the butchery? I am talking of direct distances now. Could you measure it on the plan with a ruler? -- A. About 200 feet.
- .155. Do you recollect the wind conditions on the day you went up to investigate this, May 2nd? -- A. It was a very fine day with a slight breeze but I didn't get there till about 9.45 a.m.
- .156. There would not be enough breeze to shift the position of the hats? -- A. I couldn't say. They didn't shift while I was there.
- .157. From the spot pointed out by the Madorobo woman could you see the black beret on the ground? -- A. No.
- .158. Could you see the felt hat? -- A. I think you could have done but I didn't make a test.
- .159. What is the significance of Photograph No. 10, the view from inside the kitchen? Could you see the hats from there? -- A. I don't think you could have seen the beret but you could have seen the felt hat.
- .160. Have you noticed this mark on top of this knife? Was that your mark? -- A. No it was made by



A. I. Pickwell.

EXAMINED BY MR. HARRAGIN.

.161. Just one small point, you were asked about your knowledge of these native ladies and whether they would cry out or not, from your experience do you think their reaction would be exactly the same if one of their own tribe were being killed as if it was one of another tribe? -- A. I don't know sufficient about native women but I should think their reactions would be less if it was a person from another tribe.

.162. You really don't know anything about it? -- A. I don't sir.

(Witness points out to court the different places on the panoramic photographs)

WAINGE RA MOKA affirmed:

EXAMINED BY MR. PHILLIPS:

.163. Are you a second grade police constable in the Kenya Police? -- A. Yes.

.164. In the 2nd day last did you receive certain instructions from Mr. Harman -- A. Yes.

.165. And as a result did you go out accompanied by constable Mather? -- A. Yes.

.166. And did you spend the night at the hut of one Jogu? -- A. Yes.

.167. And next morning did you set off with Mather and Jogu -- A. Yes.

.168. And then what happened? -- A. We went to near a forest. Jogu was then in front and we were behind. We saw him standing with two people.

.169. What happened next? -- A. When we got to them Jogu bowed with his head.

- Q.170. And then what did you do? -- A. Then I arrested 1st accused and batha arrested 2nd accused.
- Q.171. Did you search the first accused? -- A. Yes and found a knife.
- Q.172. Where was the knife? -- A. In the hip pocket of his trousers.
- Q.173. Did you and batha later hand over the two accused to Inspector Acton? -- A. Yes.
- Q.174. What did you do with the knife? -- A. I gave it to the Superintendent, Mr. Walfruan.
- Q.175. Is this the knife? (Exhibit 11) -- A. Yes.

NO CROSS-EXAMINATION.

BATHA RA MUNAI affirmed:

MR. PHILLIPS: This witness is tendered for cross-examination.

NO CROSS-EXAMINATION.

ARTHUR BIRCHALL ACTON sworn:

EXAMINED BY MR. PHILLIPS:

- Q.176. In your name Arthur Birchall Acton? -- A. Yes sir.
- Q.177. Are you an Inspector of the Kenya Police stationed at Nakuru? -- A. Yes sir.
- Q.178. On 3rd May last did you take over the two accused from the last two witnesses? -- A. Yes sir.
- Q.179. And did you take them to Gilgil Police station? -- A. Yes sir.
- Q.180. And there did you remove the clothes of the 1st accused? -- A. Yes sir.
- Q.181. Is that the clothing you removed from the first accused (Exhibit 12) -- A. Yes.
- Q.182. You didn't remove the clothes of the second accused? -- A. No.
- Q.183. And then did you take the two accused to the Prison at Nakuru? -- A. Yes sir.

Q. 184. And there did you hand over this bundle of clothing exhibit 12 to the prison clerk Chadrach Ambua?

A. Yes sir.

CROSS-EXAMINED BY MR. LEWIS

Q. 185. Mr. Eaton, you took part in this shouting test at the butchery a few days after Mr. White met his death? — A. That is correct.

Q. 186. And you shouted various sentences in Swahili and a witness named Agnes repeated them to Mr. Lifreman who was standing at her hut? — A. Yes sir.

Q. 187. Did the witness Agnes have any possible means of knowing beforehand what you were going to say? — A. No.

Q. 188. How was that test actually carried out? Did you have a pre-arranged set of sentences? — A. No, anything that came into my head.

Q. 189. You must have used very considerable force in shouting those words to carry that distance? — A. My voice was amplified to some extent.

Q. 190. I think you will agree with me that when a person is shouting in an angry voice his words are usually very much less distinct than at other times? — A. I should say so, depending on the voice.

Q. 191. In any case 120 yards is a considerable distance for a European to throw his voice without really shouting so that it is intelligible? — A. I would not say that. It depends on the place and time and wind and other factors.

Q. 192. Yes, but if you have a person 120 yards away specifically listening for what you are saying it is a very different thing from somebody casually hearing a commotion and being able to

pick out whole sentences? -- A. That is a matter of opinion. I have not such experience of it.

Q.193. When you carried out this test did you shout with a great deal of vehemence or not? Were you pretending you were extremely angry? -- A. Yes.

Q.194. And unless the words had been shouted with a great deal of force they would not have carried that distance? -- A. That I could not say.

Q.195. What is your opinion? -- A. Not having experimented at various stages it would be impossible to say.

CRIMINAL EXAMINATION BY MR. SAVILLE

Q.196. When you made this test with Agnes she of course knew you were going to do some shouting? -- A. Yes.

Q.197. And she was taken to a hut and just told to wait and listen to what you had to say? -- A. She was standing close to Mr. Palfreman and she had to repeat what I said and he wrote it down.

Q.198. That was pre-arranged with Agnes, that she should repeat what you said? -- A. Yes.

NO RE-EXAMINATION.

MR. HARRAGIN: Before I take the next witness Your Lordship, could Mr. Pirain have leave to go back to Nairobi?

(Mr. Pirain excused further attendance.)

SHADRACK WAMBUA affirmed:

EXAMINED BY MR. PHILLIPS:

Q.199. Are you a Warder-Clerk employed in Nakuru Prison? -- A. Yes.

Q.200. Do you remember the last witness Inspector Wotton bringing these two accused to the Prison? -- A. Yes.

Q.201. And at the same time did he hand over to you a bundle of clothing? -- A. Yes.

Q.202. Did you later hand over that same bundle of clothing to Mr. Halfreman -- A. Yes.

EXAMINED BY MR. LEAH

Q.203. What did the bundle contain? -- A. Shirt and trousers.

Q.204. Were you only handed one bundle -- A. I was given a bundle tied together.

NO RE-EXAMINATION.

At request of Mr. Leah

ARTHUR MITCHELL ACHON (recalled) (on same oath)

EXAMINED BY MR. LEAH:

Q.205. When you carried out this shouting test were you facing Agnes and Mr. Halfreman? -- A. More or less.

Q.206. What do you mean by more or less? -- A. In the general direction. I was not turned away.

Q.207. Could you see them? -- A. Yes.

Q.208. And you didn't move about at all. -- A. No.

NO RE-EXAMINATION.

HERBERT HARRISON PICKWELL sworn:

EXAMINED BY MR. HARRAGIN:

Q.209. Your name is Herbert Harrison Pickwell? -- A. Yes sir.

Q.210. You are second grade assistant inspector of Police stationed at Lakar. -- A. Yes sir.

Q.211. On the 4th day did you receive anything from Mr. Halfreman? -- A. Yes.

Q.212. What did you receive -- A. Three bundles of clothing which I knew to be the accused's clothing.

Q.213. There are only two accused; do you mean that there was clothing belonging to somebody else as well? -- A. Yes sir, another suspected accused.

- Q.214. Can you point out to the Court the two bundles which you say belong to these two accused? -- A. That would be rather difficult as they were wrapped up.
- Q.215. What did you do with them when they were handed to you by Mr. Palfreman? -- A. I bundled them up and they were placed in a safe.
- Q.216. Did you see them placed in the safe -- A. Yes sir.
- Q.217. Did you seal them up? -- A. Yes sir.
- Q.218. And did you hand them over eventually to Assistant Superintendent Pugh? -- A. Yes sir.
- Q.219. And between the time of your bundling them up and your handing them to Mr. Pugh were they kept in Mr. Palfreman's office under lock and key? -- A. Yes sir.
- Q.220. On the 11th May were you given anything else by Mr. Palfreman? -- A. I was given a knife and two cigarette tins.
- Q.221. Could you recognise those -- A. I could sir.
- Q.222. Are these the tins (Exhibit 6) and is this the knife (Exhibit 11)? -- A. Yes sir.
- Q.223. What happened to the tins and the knife? -- A. These I also sealed in two separate parcels and handed them to Mr. Pugh.
- Q.224. Who were they sealed by? -- A. By me.
- Q.225. Did you ever see them again? -- A. Yes sir, on 26th May.
- Q.226. How did you come to see them then? -- A. They were handed back to me by Mr. Pugh.
- Q.227. Did you receive the deceased's clothing? -- A. Yes.
- Q.228. Who from? -- A. From the Government Hospital messenger boy Herido. They were then taken by me to Mr. Palfreman's office and I handed them to Mr. Palfreman.

CROSS-EXAMINED BY MR. LEAN

- Q.229. You assisted Mr. Palfreman in the general investigations at the butchery? -- A. Yes sir.
- Q.230. I take it you inspected the compound or area between the butchery and kitchen? -- A. To a certain extent.
- Q.231. What sort of ground is it? Is it grass or dust or what? -- A. Earth with grass growth over it.
- Q.232. Did you notice any signs of a struggle? -- A. I didn't see any.
- Q.233. Did you look for any? -- A. I looked for some with Mr. Palfreman but I myself did not carry on the whole investigation with him as I left later on with the body of the deceased.
- Q.234. Still that would be the first thing or one of the first things you would look for and you didn't see any signs? -- A. All I saw were two hats lying on the ground.
- Q.235. You didn't see any signs of earth being scuffed up? -- A. No sir.

CROSS-EXAMINED BY MR. SAVILLE

- Q.236. You say you got two bundles of clothes. Were they wrapped in paper -- . No they were separate. None had paper round them.
- Q.237. And you put them in a safe? -- . That is correct.
- Q.238. Did you tie them up in paper before you put them in the safe? -- A. No they were placed in the safe exactly as they were.
- Q.239. In the same compartment in the safe -- . Not exactly. They were on a shelf side by side.

RE-EXAMINED BY MR. MARRAGIN

- Q.240. Were they put anywhere near the deceased's clothing? -- A. No, not close to them.

WILLIAM ROBERT BERNARD PUGH sworn:

EXAMINED BY MR. PHILLIPS:

- Q.241. Is your name William Robert Bernard Pugh? -- A. Yes.
- Q.242. Are you an Assistant Superintendent in the Kenya Police? -- A. Yes sir.
- Q.243. On the 11th day last did you receive 4 parcels, two large and two small, from the last witness A.I. Pickwell at Nakuru? -- A. I did sir.
- Q.244. Do you think they were all sealed? -- A. Yes sir.
- Q.245. Did you take them to Nairobi and there hand them over to the Government Analyst intact? -- A. I did sir.
- Q.246. On the 25th day in Nairobi did you receive from the Government Analyst two parcels and one envelope all sealed -- A. I did sir.
- Q.247. And did you bring them to Nakuru and there hand them over to the last witness Mr. Pickwell the following day 26th day? -- A. I did sir.

NO CROSS-EXAMINATION.

MURIRU WA KATA affirmed:

EXAMINED BY MR. PHILLIPS:

- Q.248. Are you employed at the Native Civil Hospital at Nakuru? -- A. Yes.
- Q.249. On the 3rd day last did you receive a parcel of clothes from Dr. Howell? -- A. Yes, and took it to the Police Station.
- Q.250. And there did you hand it over to a European Police Officer? -- A. Yes.
- Q.251. Can you see the Police Officer here? -- A. Yes.  
(Witness identifies A.I. Pickwell)

CROSS-EXAMINED BY MR. PHILLIPS

- Q.252. Was this parcel tied up in paper? -- A. Yes.

RE-EXAMINED BY MR. HARRAGIN

- Q.253. Do you know who put it in paper? -- A. When I got



it it was already in paper.

.254. You didn't see it being put in paper? -- A. No.

.255. Did you know what was inside it? -- A. I was told by the clerk that it contained the clothes of the murdered man.

WJOGU WA ROTINU affirmed:

EXAMINED BY MR. PHILLIPS:

.256. Do you live on Major Grant's farm? -- A. Yes.

.257. Do you know the second accused? -- A. Yes he is my brother.

.258. Do you remember one day a police officer came to Major Grant's farm and spoke to you? -- A. Yes.

.259. Was this the gentleman? (Indicates Mr. Palfreman) -- A. Yes.

.260. And as a result of your conversation with the Police Officer what did you do -- A. I did according to his instructions.

.261. Did you make any enquiries? -- A. Yes and I left my home at about 6.30 in the evening and went to make enquiries. I was told where they had been seen.

.262. I don't want you to say all you heard but as a result of your enquiries did you get some information? -- A. Yes.

.263. And then did you report to Major Grant? -- A. Yes.

.264. And next morning did you go with two Police constables? -- A. Yes.

.265. Are they the two constables who have already given evidence this morning? -- A. Yes, Maingi and Mbatha.

.266. Did you meet anyone? -- A. I was in front of the bakaria and I met the two accused.

.267. And then what did you do? -- A. Then the bakaria

came up and I beckoned with my head.

Q.268. And then did the two askaris arrest these two accused? -- . Yes.

Q.269. Did you see a knife on that occasion? -- . Yes I saw Mwingi take out a knife from the hip pocket of the first accused.

Q.270. Can you say if this is the knife? (Exhibit 11) -- . Yes.

NO CROSS-EXAMINATION

HIS HONOUR MR. JUSTICE THACKER: here did this arrest take place? -- . On the road at a place called Marishoni.

NO RE-EXAMINATION

COURT ADJOURNED AT 1 P.M. AND RESUMED

AT 2.30 P.M.

MAURICE HENRY FOX sworn.

EXAMINED BY MR. PHILLIPS:

Q.271. Your name is Maurice Henry Fox? -- A. Yes.

Q.272. You are the Government Analyst? -- . Yes.

Q.273. On the 12th May last did Assistant Superintendent Pugh bring you two large parcels and two small parcels? -- A. Yes.

Q.274. Were they all sealed with the seal of Kenya Police Nakuru? -- A. Yes.

Q.275. And did you open those parcels -- A. Yes.

Q.276. And did you find one parcel containing these clothes (Exhibit 12)? -- A. Yes.

Q.277. Were they all contained in one parcel marked "Makhu wa Kibinya"? -- . Yes.

Q.278. Was there another parcel containing these clothes (Exhibit 13)? -- . Yes.

- Q. 279. And was that parcel marked "Koine wa Rutinau"? --  
A. Yes.
- Q. 280. Were they in a separate parcel by themselves? --  
A. Yes.
- Q. 281. I believe there was another parcel marked "Njeroge"?  
A. Yes.
- Q. 282. Are you not concerned with that at present. When I think in the two small parcels you found this knife (Exhibit 11) and <sup>these</sup> two cigarette tins? --  
A. Yes.
- Q. 283. Taking the first parcel marked "Kakaba wa Kibonyo" did you examine those clothes? -- A. Yes.
- Q. 284. What did you examine them for? -- A. Human blood.
- Q. 285. Did you find any human blood on any of them? --  
A. Yes.
- Q. 286. On which? -- A. On the cord trousers, blue grey, the light grey jacket, pair of shorts and pink shirt.
- Q. 287. Did you find human blood on all of those? -- A. Yes.
- Q. 288. Can you give any indication in what quantity this blood was found -- A. There were only spots, not a large quantity.
- Q. 289. And on what parts of the clothing was the blood found? -- A. Here I have removed the portions.
- Q. 290. I believe you found some other blood as well? -- A. I tested all those spots for human and animal blood.
- Q. 291. With regard to the clothes marked "Koine wa Rutinau" did you examine those clothes similarly? -- A. Yes.
- Q. 292. Did you find any human blood on any of those clothes?  
A. Yes on the dark grey shorts, two spots on the seat.
- Q. 293. Did you find any human blood on any of the other garments? -- A. No.

- Q.294. Did you examine the knife (Exhibit 11) ? -- A. Yes.
- Q.295. With what result? -- A. It was negative for human blood.
- Q.296. What did you find in the Summit cigarette tin? --  
A. A blood clot wrapped in cellophane.
- Q.297. Did you make a test of it? -- A. Yes, it contained human blood.
- Q.298. Did you pack up all these articles again in two parcels and one large envelope -- A. Three brown paper parcels and one envelope.
- Q.299. And did you hand them over to Mr. Pugh? -- A. Yes on the 25th day.
- Q.300. On the 25th day did you receive a parcel by registered post from Nakuru No. 1117 ? -- A. Yes.
- Q.301. Sealed with the seal of Kenya Police Nakuru? -- A. Yes.
- Q.302. Did you open the parcel and did you find inside these articles? (Exhibits 7, 8, 9 and 10) -- A. Yes.
- Q.303. Would you look particularly at Nos. 7, 8 and 9, the cardigan, shirt and vest. Can you see any incisions in those garments? -- A. Yes, one on the left forearm and two on the front.
- Q.304. Are these two close together? -- A. They were joined and seem to have come adrift now. I think you can still see the form and shape of two incisions.
- Q.305. Assuming that those two incisions were made with a knife do you think they could have been made by one blow with the knife? -- A. No.
- Q.306. Can you see any corresponding incisions in the other garments? -- A. There are two in the vest and two in the shirt.
- Q.307. After examining these articles did you return them by registered post to the Superintendent of Police on the 25th day? -- A. Yes, by registered packet No. 1395.

GROUP - EXAMINED BY MR. LEAH

- Q.308. Mr. Fox, with regard to the coat, shorts and shirt marked "Pakahu" you say you tested some of the spots on the coat for human blood and also bovine blood. Can you by any chance say which was present in the largest quantity? -- A. No; on some of the garments I had stronger reactions for one.
- Q.309. I am talking about the coat alone at the moment. -- A. No, there were equally strong reactions for ox, pig and human blood.
- Q.310. And you had no method of telling what stains got there? -- A. No.
- Q.311. With regard to the long trousers you only got a faint reaction for human blood but those had a strong reaction for pig's blood. Would that faint reaction have become apparent when you were testing actually for pig's blood? -- A. No. I think the faint reaction was probably due to the garment having been washed.
- Q.312. I presume you did a precipitant test and when you are making a precipitant test for ox blood or pig's blood is it not possible to get a reaction for human blood? -- A. No, in the dilution I use when testing for human blood I couldn't get a reaction for ox blood or vice versa.
- Q.313. You said just now that the faint reaction for human blood was probably due to the trousers having been washed -- A. Yes it seems to be spread over an area.
- Q.314. And you got a strong reaction for pig's blood? -- A. Yes.
- Q.315. And I presume that the pig's blood arrived after

the human blood? -- A. I could not say. One may have been on the garment for some time and more or less fixed to the fibre and more difficult to remove.

Q. 516. But I take it you only tested small portions? --

A. Yes but there was evidence of a stiffness over quite a large area.

Q. 517. But by far and away the strongest reaction was pig's blood? -- A. Yes.

Q. 518. Now the shorts and shirt marked "Wakahu" on those you found no human blood? -- A. Yes I found human blood on the pink shirt.

Q. 519. In the Court below you didn't mention any human blood. -- A. In the case of the shorts I also found a faint human reaction.

Q. 520. Those stains were all down the front? -- A. Yes.

Q. 521. Can you make any test to see to whom that blood belonged or to whom it did not belong? -- A. It is possible.

Q. 522. Was any test of that nature made? -- A. No.

Q. 523. So far as you are concerned the blood might have belonged to anybody, myself for instance? -- A. Yes.

Q. 524. And the blood you found was in spots rather than in a mass? -- A. Yes.

Q. 525. Whereabouts are most of the marks on the coat? --

A. On the front and on the shoulders and sleeve.

Q. 526. The left sleeve? -- A. Yes.

Q. 527. You cannot say whether the blood on the left sleeve was of a more recent origin than the other blood? -- A. No.

CROSS-EXAMINED BY MR. SAVILLE

Q. 528. When you cut out a small patch did you then test that particular patch for every type of blood you

were testing for? -- A. No I put the pieces together and make an extract of that and test it for different blood.

Q. 529. So the whole lot went into one solution? -- A. Yes.

Q. 530. And did you do that for each particular garment or all the garments together -- . Each particular garment was kept separate.

Q. 531. I suppose you would get a reaction from a very small quantity of blood indeed? -- A. Yes.

Q. 532. An almost microscopic quantity of blood give you a reaction? -- A. I would hardly say that. You must have a certain quantity.

Q. 533. What is the least quantity of blood that you can detect? -- A. I don't think I can put it into weight. I suppose about 5 drops in a solution of 1 in 1000.

Q. 534. You only want three drops and then you get a reaction? -- A. If I wanted to try other tests I would require more.

Q. 535. You want 5 drops for each test you make? -- A. That is putting it at the very minimum.

Q. 536. What is the difference between a strong and a weak reaction? What conclusions do you draw from that? -- A. Either there is not much blood present or some of the blood has become fixed and is incapable of going into solution.

Q. 537. How long does it take for the blood to become fixed? A. It rather depends upon what may be present. There may be certain substances present which would tend to fix the blood and render it insoluble.

Q. 538. Was there anything on these clothes that might create that? -- A. There might be anything on some of these clothes.

- Q. 339. Without those conditions existing will the blood ever become fixed? -- A. It is possible after a length of time.
- Q. 340. What is the length of time? -- A. Lucas in Egypt has found human blood in mummies.
- Q. 341. It is hardly probable that the blood you found on these clothes had become fixed? -- A. Some of it may have become fixed. I might have got a lot more but I didn't look further.
- Q. 342. So that the conclusions you drew from a faint and a strong reaction are nothing at all? -- A. I would not bother to mention it if it were nothing at all.
- Q. 343. Except that where you got a faint reaction there must have been a very small quantity of blood? -- A. That is the natural assumption.
- Q. 344. I want you to refer to the pair of shorts belonging to Koine. Are these the only two cuts you made? -- A. Yes.
- Q. 345. Will you give the Court some indication of the area of each cut - each bit of material? -- A. One is very nearly a square inch I suppose, and the other might be between a quarter and half a square inch.
- Q. 346. What reactions did you get? -- A. Human and ox blood. I tested for human, ox, pig, sheep and fowl blood.
- Q. 347. And were the human and ox blood more or less the same strength - the same reaction? -- A. Yes.
- Q. 348. And the best you can say is that one might have been ox and the other human blood or else each might have been a mixture of both? -- A. Yes they were both present.



- Q. 349. You made no quantitative analysis of the blood present  
A. No.
- Q. 350. Was that possible? -- A. It might be. I have never done such a test.
- Q. 351. With regard to the deceased's cardigan, in your opinion there are two separate incisions? --  
A. Yes.
- Q. 352. Can you draw any conclusion as to the force behind each incision? -- A. I don't think so.
- Q. 353. But there are also corresponding marks on the undergarments? -- A. Yes on two of them.
- Q. 354. Assuming there was a human being wearing these garments when the incisions were made would you not have expected to find two marks on the body? --  
A. It depends how the cuts were made but I must say I would expect to find two cuts on the body.
- Q. 355. I suppose that knife could have made both those cuts -- A. Yes.
- Q. 356. Would you expect them to be made with a stab --  
A. They seem to me to be vertical cuts.
- Q. 357. If I stab through this piece of paper is that the cut that is in those garments? -- A. Those incisions are greater than the diameter of the knife.
- Q. 358. Each one of them -- A. One of them is smaller -- about the width of the knife.
- Q. 359. Don't you think that the smaller of those two incisions was made by a larger knife? -- A. I don't see why at all. You could make a very much bigger incision with that knife if you wished.
- Q. 360. Assuming the wound in the body was exactly the width of that knife at its broadest point would you expect the incision in the clothes to be centers? -- A. No, I don't think so.

HERBERT MICHAEL HARRISS sworn

EXAMINED BY MR. HARRAGIN:

- Q.361. Your name is Herbert Michael Harries? -- A. Yes.
- Q.362. And you own a farm called Larvadiac about 17 miles from Nakuru? -- A. Yes.
- Q.363. And in addition to the actual farm business you also run a butchery? -- A. Yes.
- Q.364. On the 2nd May who was running that butchery? -- A. My assistant Mr. Jack White.
- Q.365. And how long had he been in your employment? -- A. Between 5 and 6 years.
- Q.366. What age was he? -- A. 27.
- Q.367. During the whole of that time have you had any complaints from the labourers in your employment about him? -- A. Never. He was the most even-tempered man I have ever come across.
- Q.368. Do you know those two accused in the box? -- A. Yes.
- Q.369. On the 2nd May do you know where they were employed and what at? -- A. The left hand one had been taken into my employ a short time before. The right hand one had not actually been taken into my employ but the head boy in the butchery one Njeroge had said that he wanted me to write him on.
- Q.370. He was working for you pending being written on? -- A. Yes.
- Q.371. And the head boy was Njeroge? -- A. Yes.
- Q.372. Do you remember about 8 o'clock in the morning of that day? Where were you? -- A. I was at breakfast.
- Q.373. And whilst you were at breakfast did anyone come to you? -- A. Yes I was just finishing breakfast when Njeroge came to the window.

- Q. 374. And did he make a report to you? -- A. Yes.
- Q. 375. And having made that report what did you do? -- A. I jumped up and went straight to the car as the butchery was about three quarters of a mile from the house. I got into my car and went down to the butchery.
- Q. 376. And what did Hjeroge do? -- . He went by the footpath.
- Q. 377. Iso to the butchery? -- . Yes.
- Q. 378. Were you by yourself in the car? -- A. No my head boy was with me.
- Q. 379. What is his name? -- A. Eibe.
- Q. 380. As you got to the butchery what was the first thing you saw? Did you see a horse there? -- . Some way short of the butchery there was a boy holding Mr. White's horse.
- Q. 381. Having seen the horse did you dispatch it home? -- A. Yes it was a young horse and I thought it would be safer.
- Q. 382. And you went on to the butchery? -- A. Yes.
- Q. 383. As you got to the butchery compound what did you see? A. I saw white lying on the ground.
- Q. 384. Did you go up to him? -- . I thought he was probably pretty seriously injured and I drove up as near as I could and stopped and got out.
- Q. 385. Having regard to the various photographs and the plan could you describe to us exactly where he was lying? -- A. Close in front of the butchery door with his feet towards the door (Witness indicates on plan).
- Q. 386. And when you say close to the door about how far do you mean? -- A. His feet might have been 5 to 10 feet away from the door.

- Q.387. Would you say these two photographs (Exhibit 3) are true photographs of the body as you saw it? --  
A. Yes.
- Q.388. And when you got out and went up to Mr. White was he dead or alive? -- . quite dead.
- Q.389. And did you notice anything about him to account for that? -- A. There was a wound on his left side and one on his wrist - a big gash.
- Q.390. Was he wearing this jumper? -- A. Yes.
- Q.391. You recognise that as his cardigan? -- A. Yes.
- Q.392. I suppose you would not recognise the other clothes?  
A. Not particularly. I know he very often wore a vest and trousers like those.
- Q.393. Did you dispatch Kibe in one direction and did you yourself go off in another to a telephone? --  
A. I sent Kibe off towards the hut on the right front from where I was standing by the body and as he didn't come back as I expected in a moment or two I got into my car and followed him and met him on the road to Njoro and we went on together as far as my farm gate.
- Q.394. And you yourself went on to telephone the police? --  
A. Yes.
- Q.395. And did you then return to the scene? -- A. Yes.
- Q.396. During the whole of that time did you see either of the accused? -- A. No.
- Q.397. The only person you had any talk with in connection with the actual death was Njeroge? -- . Yes.
- Q.398. You then looked round the place did you? -- A. Kibe got back first and when I got back they got a sheet and put it over the body.
- Q.399. And was the body otherwise in exactly the same position? -- A. Yes it had not been touched.
- Q.400. Did you notice anything lying about outside the

compound? -- A. In the compound itself there were two hats on the ground near the house known as the kitchen. I went all round the compound and I saw some blood nearby the hats.

.401. Did you recognise the hats? -- . I recognised one as being White's.

.402. Could you tell His Lordship exactly where that hat was lying -- . About 10 feet away from both the kitchen door and the water tank. It made a triangle with the kitchen door and the water tank with about a 10 foot side.

.403. Could you tell us how far it was from the body? -- . It must have been 40 or 45 feet and the other hat was between White's hat and the water tank, within a few feet from the tank.

.404. Do you know whose hat that was? -- A. Yes it was between two boys, Jerome and Kahu. They both wore it.

.405. You were going to tell us about some blood? -- . The ground between the hats was hard but there was no grass and there were scuffle marks of a struggle and very close to the hats more or less in a semi circle there was a faint mark of blood spots.

.406. You could see a small trail of blood leading from where the hats were to where the body was lying? -- . Yes, and just inside the butchery door there was a spot of blood as big as a half-crown on the concrete floor which was quite fresh.

.407. And as you have mentioned the butchery just to clear that point up, was there a lot of slaughtered oxen in the butchery at that time or anything like that? -- A. As you went in the butchery door there was a table used for cutting up meat and 2 or 3 feet from the edge of the table there was a

large piece of hind quarter of an ox. It was meat that had probably been dead some 3 or 4 days, and there was a wad of meat cut out of it - fresh cut that morning.

.408. The suggestion I have put to you is this - when you saw this blood just inside the butchery did that indicate anything to your mind or did you say to yourself "oh that is ox blood"? -- A. I knew at once it must have been white's blood because the piece of meat in the butchery was several days old and would not have caused fresh blood.

.409. Now besides this trail of blood which lay from the hats to the body were there any other external marks on this hard surface of anything having happened? -- A. Yes, near the hats there were footmarks and the hard surface was scuffed.

.410. Indicating to you that there had been a struggle on that spot? -- A. Yes. On the rest of the compound it would have been very difficult to see anything because it was covered with grass.

.411. Did you look round to see if you could find the weapon that had done the damage? -- A. Yes.

.412. With what success? -- A. I didn't find it, and it occurred to me at the time it would have been one of the butchery knives because the body was close to the butchery door and there was a piece of obviously freshly cut meat lying on the table within a few feet of the door.

.413. Do you often go down to the butchery? Do you know anything about the knives they have down there as a rule? -- A. They had two knives belonging to the butchery, a saw, two egg choppers and an axe.

.414. How many of these did you find? -- A. There was one knife missing.

Q.415. Do you know what type of knife it was that was missing? -- A. Yes the ordinary type known as the butcher's knife with a slightly curved point and a square section handle with 3 rivets holding it.

Q.416. We have one knife in Court. Is that it? (Exhibit 11)

A. No that was not the knife issued to the butchery. One thing I noticed when I was looking round was that there were some fowls there which had been taken from the poultry yard for slaughter. Some of them had been killed and one was actually walking about when I came.

Q.417. What is the importance of that incident? -- A. It shows that the boys who had fetched the fowls had been there.

Q.418. Do you know who the boys were who had fetched the fowls? -- A. I know Hjeroge was one and I am not sure about the other. I fancy he would be Koins.

Q.419. To revert once more to the knife Exhibit 11. Do you know that knife? -- A. I could not identify it particularly because half the boys in the country carry knives like that.

Q.420. Was there any other knife being used in the butchery in place of the one that was missing? You said one was missing when you checked up? -- A. I was told that this one was being used ....

MR. SAVILLE: I object My Lord.

Q.421. When did you first see that knife? -- A. The first time I saw it was when the Police showed it to me. It was not in the butchery when I went there.

Q.422. I just want you to tell me something about the farm life. What happens to the skins of the animals

near the butchery? -- . The first thing that happens is that they are cleaned by Wandorobo women who come first thing in the morning and clean them.

Q.423. Is there any particular place allotted to them for doing the cleaning of the skins? -- A. Yes, they usually do it on the side of the compound nearest the kitchen.

Q.424. On that particular day when you went down to the butchery did you see any of those women about? -- A. No.

Q.425. I take it then that the Police arrived in due course? A. Yes.

Q.426. And you pointed out to them everything you could? -- A. Yes.

Q.427. And you issued certain instructions of your own? -- A. Yes.

Q.428. Where did the accused live on your estate? -- A. Two boys Njeroge and akahu shared a hut (Witness indicates hut on plan)

Q.429. And did you point out that hut to Mr. Palfreman when he was there? -- A. Yes.

Q.430. Were you there when the Doctor arrived? -- A. Yes.

Q.431. And did you identify the body to him as that of Jack White? -- A. Yes.

Q.432. Immediately after you discovered the murder did you make any effort to find either <sup>of</sup> the accused or both of them? -- A. Yes.

Q.433. What did you do? -- A. I had just risen up from examining the body when Njeroge appeared.

Q.434. And he told you something and in consequence of what he told you what did you do? -- . I sent Njeroge to fetch the two accused.

Q.435. Did he bring them? -- A. No.



Q.436. Do you know a place called Marishoni? -- A. Yes.

Q.437. How far is that away from the butchery? -- A. Going direct something like 12 miles. By the road it is a long way.

CROSS-EXAMINED BY MR. LEAN

Q.438. Is it fairly open country round about the butchery in the direction of Marishoni? -- A. First of all there are the butchery buildings and then there is a piece of open country about 700 yards and then you get on to Lindstrom's farm where there are a few trees and some cultivation. After Lindstrom's farm I think it is forest all the way.

Q.439. Two people leaving the butchery within a minute of each other going towards Lindstrom's farm would be more or less in sight of each other for about a quarter of a mile? -- A. Yes rather more than that, about half a mile.

Q.440. Have you ever known Mr. White in a real temper? -- A. Yes, once. The only time I saw him really angry was when he found a native ill-treating one of the working oxen.

Q.441. And you might say he had real provocation at that time? -- A. Yes the boy had been doing a really cruel thing to the ox.

Q.442. Have you ever known Mr. White strike a man before? -- A. No.

Q.443. Has he given to shouting and screaming at natives? -- A. I hardly ever heard him raise his voice.

Q.444. When he was angry with a native what sort of attitude did he adopt? -- A. He was firm and his voice would get hard but he didn't shout at them or strike them.

- Q.446. That man Njeroge you have mentioned, did you have any confidence in him? — A. No.
- Q.447. In fact I think I am right in saying that at one stage you suspected him of being implicated? — A. I am perfectly convinced of it at the present moment. I think except for Njeroge the chances are that Jack would not have been murdered.
- Q.448. Do you happen to know whether Mr. White was annoyed with Njeroge on the date of his death? — A. He had cause to reprimand him that morning on account of Njeroge not performing his duties either on Saturday or Sunday.
- Q.449. In what way did he fail to carry out his duties? — A. On Saturdays the butchery boys have to clean up and then they are free and on Sundays they come at 5 to 4 o'clock to prepare the goods for Nakuru. On the previous Saturday they had left everything filthy and on Sunday they had not come at all.

HIS HONOUR MR. JUSTICE BRADY: That 4 o'clock you mention on Sundays, is that in the morning or in the afternoon? — A. In the afternoon, my Lord.

- Q.450. I think I am right in saying, Captain Barries, that supposing there was a pig to be cured or treated in any way that had been slaughtered it would be Njeroge's job to give his attention to it rather than these boys? — A. Yes it would be Njeroge's work with akaha as his assistant.
- Q.451. But Njeroge would be the guiding spirit in it? — A. Yes.
- Q.452. At the time this killing took place it was about 7.30 in the morning. Would there be boys working in the piggery? — A. Yes.

- Q.453. And in the garden? -- A. Yes.
- Q.454. Can you see from the garden into the butchery compound? -- A. No.
- Q.455. I think I am right in saying that after Friday morning there is no more slaughtering of cattle in the slaughter house at Nakuru on ordinary weekdays? -- A. After Friday you can say. On Saturday there is not but occasionally there is slaughtering on Sunday.
- Q.456. Would you say whether there were any fresh slaughtered skins in the butchery on that particular Sunday? -- A. No there were not.
- Q.457. There weren't any that Sunday? -- A. No, but because there didn't happen to be that Sunday there is no reason why there should not be any on other Sundays. The cart comes up every Sunday night from the far end of the cars and if there is a skin of an animal that has been killed or has died it is brought up with the crew.
- Q.458. Would that skin automatically be scraped next day? -- A. Yes.
- Q.459. Do you keep the wandorobe women there? -- A. No, they come every day. It is very seldom there is not a skin of some sort to be cleaned.
- Q.460. When you looked in the butchery you say there was one knife there? -- A. When I checked up afterwards there was one knife with a blade about 10 or 12 inches long.
- Q.461. You have a considerable number of wandorobe on your farm? -- A. Yes.
- Q.462. And you have known them for a good many years; you know their habits fairly well? -- A. Yes.
- Q.463. Would it not strike you as somewhat extraordinary

that Wandorobo women seeing a tragedy take place right in front of them would not cry out? --

A. Wandorobo women are more like wild animals that Lumbwa or Swahili women and the first instinct of a wild animal is to flee and not to make a noise. She is more likely to trust to her legs.

Q.464. I think you will agree with me it is unlikely that a woman would sit there watching a thing like this for approximately 5 minutes and then take to her legs? -- A. I don't think that is a question I can answer. A Jalo woman would be more likely to raise cry.

Q.465.

CROSS EXAMINED BY MR. HAYLES

How long was the missing butchery knife? -- A. It would be about a six inch blade.

Q.466. Somewhat bigger than this knife? -- A. Yes rather longer than that.

Q.467. There is none of this sort of edging on it? --

A. No it is an absolutely plain wooden handle so as to make it easy to clean.

Q.468. In other words your missing knife has no nick in it where the blade joins the handle? -- A. No.

Q.469. But otherwise the shape of the blade is very similar to this? -- A. No, an ordinary butchery knife is not quite so thick as that.

Q.470. And it is a sharper knife than this altogether? --

A. The boys usually have these knives as sharp as a razor.

Q.471. Just feel the edge of this blade. This knife is not very sharp is it? -- A. No.

Q.472. Butchery knives have to be pretty sharp to do good work? -- A. Yes.

Q.473. How long had No.3 accused been working before being signed on? -- A. As far as I can remember he was first reported to me something under a week

before this happened and I was busy then and told them to bring him up and I didn't think any more about it.

Q.474. Going back to your investigations on the spot, just after you saw Mr. White was dead you say there was a trail of blood from somewhere between the hats to where the body lay? -- A. Yes it went off to the right first and then curved to the left to where the body was lying.

Q.475. If you placed yourself somewhere in a position by the hats and faced the body then it went to the right and then curved round to the left? -- A. Yes.

Q.476. Would you say it was a reasonable deduction that the fight started somewhere near the hats and where the hats were and that White got his wrist cut somewhere about there? -- A. That was not the construction I put on it. My idea was that he was wounded on the wrist at the doorway of the butchery and that would account for the spot of blood on the cement. One could not say how the fight went because the grass didn't show the footmarks but there evidently had been a scuffle nearby the hats.

Q.477. How do you account for this trail of blood from the hats to the body? -- A. There were two wounds on the body and the blood spots might have come from either of them. I inferred that the wrist wound was done at the butchery door and the fatal wound somewhere near the hats.

Q.478. Which hat was the scuffle nearest to? -- A. It was between the two and there were a few marks near the herd.

Q.479. And from the spot of blood in the butchery you would

say that White actually went into the butchery?—

A. Yes, the spot of blood was something like a foot inside the doorway.

Q.480. When you say there was a trail of blood was it definitely a line of blood or spots? — A. Little spots.

Q.481. You said Njeroge got the fowls. How do you know that? — A. The other boys up at the house told me so. I didn't see him but it is common knowledge.

Q.482. But you don't know yourself; you were told? — A. Yes.

Q.483. Do you know if there is any reason why White should have wanted to reprimand either of the two accused on that Sunday morning? — A. They had absented themselves just the same as Njeroge.

Q.484. Do you know that for a fact or were you told? — A. That I was told afterwards but the evidence in the butchery corroborated it because the things were lying about.

Q.485. But you didn't see them absent on Sunday? — A. I couldn't see them if they weren't there but they had cleared off leaving everything lying about. Actually I passed the butchery and the pigsties about 6 p.m. on Sunday. There were boys at the pigsties but none at the butchery.

Q.486. Who was really responsible for the butchery? — A. Njeroge.

Q.487. Whose is the hut at the left hand side of the plan near Njeroge's? — A. I think that is Allulu's.

Q.488. Are there huts above that on the plan? — A. Yes there are several more. I think there are four beyond Allulu's.

Q.489. On that Sunday morning who did you expect White to be more angry with, Njeroge or one of the others?—

A. Njeroge principally but both Njeroge and

Wakshu were to blame because both had cleared off.

RE-EXAMINED BY MR. HARRAGIN

- Q.480. This Nyancsi who has been referred to, do you know if that is the name of a female or a male? --  
A. I don't.
- Q.491. You have been asked in effect why you could not see these two running away across country. Can you tell me how long you calculate it was from the time of the death to the time you got there? --  
A. When I examined the body it struck me that it was far cooler than I would have expected considering the time it would take for Mjeroge to come to the house and for me to get back in the car. I thought that should be 10 minutes and 10 minutes would have been ample time for anybody who had been at the fight to have disappeared.
- Q.492. You have been asked a lot of hypothetical questions with regard to what these ladies would do when a fight was on. What is your experience of human beings generally do they stand and watch a fight or do they straight away run away? --  
A. I think the reaction of these Wandorobo women would be very slow.
- Q.493. But is it not a perfectly human action to stand and look at a fight whether it be two dogs or two cocks or human beings? -- A. Yes.
- Q.494. There is nothing very unnatural in people watching a fight is there? -- A. No, and I should say their minds are pretty slow moving and they would not start to run until something actually happened.
- Q.495. You mean that when someone drops down dead they think it is time to make themselves scarce? --  
A. Yes.

*Corrected and till 7.30*

Tuesday 26th July 1938

COURT RESUMED 9.30 a.m.

ALAN TAYLOR HOWELL sworn

EXAMINED BY MR. HARRAGH:

- Q.496. Your name is Alan Taylor Howell? -- A. Yes.
- Q.497. And you are Medical Officer in charge of the Native Civil Hospital at Nakuru -- A. Yes.
- Q.498. Do you remember the 2nd May? -- A. I do.
- Q.499. In the morning of the 2nd May where did you go to and with whom? -- A. I went to the farm of Captain Harries at Njoro with Mr. Palfreman.
- Q.500. Arriving there at about what time? -- A. About a quarter to ten.
- Q.501. When you got to this farm what did you see? -- A. The body of a European was lying on the ground on its back.
- Q.502. That body was identified to you as the body of whom? -- A. Of Mr. Jack White.
- Q.503. By whom? -- A. By Captain Harries.
- Q.504. Was this body that you saw alive or dead? -- A. It was a dead body.
- Q.505. And did you form any opinion as to how long it had been dead? -- A. Two to three hours.
- Q.506. Did you examine the body on the spot? -- A. I did.
- Q.507. And what did you notice? -- A. There was a wound on the left wrist and there was very much blood on the front of the vest and shirt on the body and on examining underneath there was a wound in the chest on the left side.
- Q.508. Are those the clothes that were on the body? -- A. Yes.
- Q.509. Did you come to any conclusion there and then as to the cause of death? -- A. The stab wound in the chest seemed the obvious cause. I had either



penetrated the lung or heart.

- .510. What did you have done with the body? -- A. It was removed to the Mortuary at Nakuru.
- .511. And there did you do a post mortem examination? --  
A. Yes.
- .512. And can you now say definitely what was the cause of death? -- A. Death was caused by a penetrating wound through the left lung into the right and left ventricles of the heart.
- .513. Could you give us any idea of the direction of that wound? -- A. -- It passed downwards and inwards.
- .514. How deep would you say it was? -- A. -- Somewhere about 4 1/2 inches.
- .515. Did you form any opinion as to the weapon which would have been used to cause a wound such as you saw? -- A. -- It was most probably caused by a knife.
- .516. And did you form any opinion as to the force with which the knife would have to have been used? --  
A. -- It would have to be a powerful blow.
- .517. You mentioned another wound on the wrist. Could you tell the Court what type of wound that was? --  
A. -- It was not a serious wound, about 2 inches long. It was fairly superficial on the back of the wrist and got deeper in front. It was I suppose about one sixth of an inch deep.
- .518. Did you form any opinion as to how that wound might have been caused, again assuming a knife? --  
A. -- It appeared to have been a downward blow.
- .519. Would it have been a natural sort of wound for a man who was defending himself with his arm? -- A. -- I think if a man threw his arm up the knife coming down would cause such a wound.
- .520. Could a knife such as Exhibit 11 have inflicted

either or both of these wounds? -- A. Yes I think it could.

Q.581. And could these wounds also have been inflicted by a knife which was slightly longer and not exactly shaped like this - a butchery knife? -- A. Has the butchery knife a flattened edge at the back?

Q.582. Do you mean it must have had a flattened edge? --

A. The top of the wound was narrower than the bottom which indicated that both sides of the blade were not exactly the same.

Q.583. What was the general condition of the deceased's body?

A. It was thoroughly healthy.

Q.584. Could you say he was a strong young man and well developed? -- A. He was quite a well built young man.

Q.585. There was no evidence of any disease? -- A. No.

Q.586. Did you remove the clothes? -- A. Yes.

Q.587. And did you send them anywhere? -- A. I sent them to the Police Station.

Q.588. By whom? -- A. By one of my Hospital people. I sent them to the office first and they were then sent down to the Police Station. I can't remember the name.

Q.589. Have you a man working for you named Muriru? -- A. We had then.

Q.590. Could he have been sent with the clothes? -- A. Yes, but I cannot remember exactly.

Q.591. Looking at the clothes there is a suggestion that these are two incisions. Looking at the incisions in all three garments what is your opinion? --

My opinion is that there was one incision. There is no second wound in the chest.

Q.592. Having seen the wound could you tell us how far a man would be able to move if he wished to after

receiving a wound of that description? -- A. I think he might travel a considerable distance. It is impossible to say as it depends on how much blood is being lost from the heart. I should think he could travel 50 or 60 yards.

Q.533. Would you expect him having received that wound to have to desist from further fighting? -- A. Yes.

Q.534. He couldn't have gone on with the scrap? -- A. No.

Q.535. Did you examine either or both the accused? -- A. I examined Wakahu.

Q.536. And can you tell us if he was suffering from anything?

A. He had a swelling over the lower jaw on the right hand side starting at the angle of the jaw and going down the jaw bone forwards about 1 inch.

Q.537. Will you tell us exactly what type of injury it was? Was it in any way serious? -- A. No it was not serious.

Q.538. Was there any abrasion on the skin? -- A. There was a slight cut on the anterior end of the swelling about a quarter of an inch long.

Q.539. Did you form any opinion as to the type of instrument or whatever it was that caused that injury? --

A. Any form of blow would have caused it. He might have knocked it against something or received a blow.

Q.540. What type of blow are you referring to? -- A. It was probably a blow with the hand or fist.

Q.541. Could the open hand have inflicted that injury? --

A. I think it is possible but in view of the slight cut it is more likely that something hard caused it.

Q.542. Did you find any other signs of injury on him? --

A. Above the left wrist joint on the anterior aspect of the wrist there was a scratch about 1 inch long.

- Q.543. Of what type? -- A. It was just through the skin.
- Q.544. Was it superficial? -- A. Yes. There was a small abrasion in close relation to it.
- Q.545. Did you find anything else -- A. The lower half of the right forearm was slightly swollen.
- Q.546. What day did you do this examination? -- A. 4th May.
- Q.547. Did you form any opinion as to how long before you saw the accused he had received these injuries?--  
A. They had happened within the last three days but I could not go any further than that.

Q.548. Generally speaking would you say any of these injuries were serious in any way whatever? --A. No.

CROSS-EXAMINED BY MR. LEAH

- Q.549. Would you say the injury on the jaw was painful when it was caused? -- A. I think any blow over the bone that causes swelling is painful unless it is an actual knock out blow in which case you don't feel it.
- Q.550. It must have been a fairly powerful blow if it was administered with the open hand? -- A. Yes.
- Q.551. Would you say a very powerful blow? -- A. I would say a powerful blow if it was administered with the open hand.
- Q.552. It was not enough to knock a person out? -- A. No.
- Q.553. With regard to the knife you saw just now, I think I am right in saying that if that knife had caused the injury in the chest it must have gone in very nearly to the hilt? -- A. I should say it had gone in practically to the hilt.
- Q.554. Don't you think taking all the circumstances into consideration it is more likely that the wound was caused by a slightly longer blade? -- A. I don't think it would have to have been caused by a longer blade.

- Q.555. But it certainly could have been caused by a longer blade? -- A. Yes, but equally well by that one.
- Q.556. Could it have been caused by a knife slightly broader than this? -- A. Does it go off to a point with a slight curve?
- Q.557. The knife I have in mind is the ordinary sort of knife a butcher cuts meat with. It has a broader blade than this one and my information is that the point is somewhat rounded. -- A. It was quite definitely a sharp pointed thing that caused this wound. The wound into the heart was only very small and yet it carried through into the other ventricle which seemed to indicate that it had a longish point like this one.
- Q.558. Could Mr. White after receiving the stab in the chest have shouted? -- A. Yes.
- Q.559. Loudly? -- A. Yes I think he could.
- Q.560. And what would you say is the normal reaction of a man who has been stabbed? Could he not be inclined to shout? -- A. It depends on the circumstances and if the shouting was going to be of any use.
- Q.561. He would have time to think of that before he lost consciousness and collapsed? -- A. Yes I think so. After the first 20 or 30 seconds he would be gradually becoming weaker and weaker.
- Q.562. Assuming there were people in the vicinity would you consider the normal reaction would be to shout for help? -- A. I think the normal thing would be to shout for help if you could anticipate assistance anywhere near.
- Q.563. If there had been a struggle between the deceased and some other person would you not have expected to find bruises on the deceased's body? I am assuming that the struggle was immediately prior

to his death and it was during that struggle that he got the fatal wound. Would there be any bruises on his body? -- A. There would only be bruises if the deceased received blows. Actual grappling would not cause bruising.

Q.564. If he were gripped from behind would there not be any marks? -- A. Not necessarily.

Q.565. But if two people are having a fight wouldn't you expect to find a certain amount of marks on both parties? -- A. Yes if a severe struggle had gone on and they were being battered about.

Q.566. And it would not need actual blows with the fist to cause marks -- A. No.

Q.567. Were there any marks of that kind on Mr. White? -- A. I could find no bruising.

Q.568. You didn't find a bruise down the ribs as though somebody had hit him? -- A. No.

Q.569. The wound in the chest must have bled very freely; there must have been a large quantity of blood? -- A. A fair amount but not a great deal. The bleeding would be chiefly internal.

Q.570. There is a great deal of blood on the trousers and shirt and vest? -- A. Yes.

Q.571. If any person gripped the deceased round say the chest and shifted his grip to the legs when that blow was delivered I presume he would have a certain amount of blood over his arms and sleeves? -- A. After the blood got down there would certainly be blood on the sleeves.

Q.572. And I think I am right in saying any person taking part in the struggle at the time that blow was struck would probably have a certain amount of blood on him? -- A. I think it is probable that the person who struck the blow would probably get

blood on the hand and wrist.

Q.573. And probably on the cuff of his shirt if he was wearing one? -- A. Yes.

CROSS-EXAMINED BY MR. SAVILLE

Q.574. I think you have already said that the deceased man could have remained on his feet for some considerable time after the blow was struck? --

A. I think he could have staggered 20 or 30 yards.

Q.575. You have seen the deceased's trousers, would you say that blood reached there while he was on his feet? -- A. I think it is most likely.

Q.576. Could you give us any indication as to how long it would take the blood to get there? In other words would you give any indication as to how long he was standing after he received the blow? --

A. I should imagine it could have got there in about 20 or 40 seconds.

Q.577. If when the accused received that blow he also had a man holding him forcibly by the waist or round the legs is it probable he would remain standing 30 or 40 seconds after he received the blow? --

A. Not if the person was still holding him.

Q.578. How soon would he have had to give up struggling? --

A. As soon as the blow was struck.

Q.579. And if the man held on for even a second after the blow was struck he would probably have fallen down on the spot? -- A. I am afraid I cannot say that.

Q.580. How long could he have stood with a person gripping his round the legs or waist assuming a struggle? -- A. I would give up struggling as soon as he was struck and I think if there were any attraction backwards he would be forced backwards.

- Q.581. And if when the blow was struck the deceased was being held round the shoulder or neck and after the blow was struck the grip of the assailant was shifted to round the legs? — A. I should think he would fall on his face.
- Q.582. And it is not likely he would move after that? — A. He would not have the strength to move.
- Q.583. I think you saw the body at the same time as Mr. Palfreman? — A. Yes.

RE-EXAMINED BY MR. HARRAGIN

- Q.584. Could you expect a man who was merely being gripped like that to have any bruises on him at all? — A. No.
- Q.585. Looking at the deceased's clothes, the vest and shirt, they have a great deal of blood on them? — A. Yes.
- Q.586. Looking at the cardigan, is there much blood on it? — A. Not externally. There is quite a fair amount on the inside.
- Q.587. Therefore assuming that there was someone fighting in front of him would you expect to see a lot of blood on that person? — A. No.
- Q.588. With regard to the blood on the trousers, could that have come from the wrist? Was there much bleeding from the wrist? — A. No artery had been severed. I don't consider that blood came from the wrist.

HIS HONOUR MR. JUSTICE THACKER: Do you remember when you examined the body whether Mr. White had a ring on his finger? — A. No.

HIS HONOUR: The scratch you told us about on the anterior end of the swelling about 4" long, could that be caused by a finger nail or what do you suggest could have caused it? — A. I don't think it was caused by a finger nail. It could have been caused



by many things and it might have had nothing to do with the swelling at all. It was quite superficial.

MR. LEAH: Before the witness leaves could I put two questions to him:

HIS HONOUR: Very well.

Q.589. Could the swelling on the accused's arm have been caused by a handcuff or anything like that? --

A. No, it was too high.

Q.590. It is not an extraordinary thing to find on a native a slight swelling of the forearm? -- A. It is not ~~unusual~~ unusual. It gave one the impression that it might have been caused by a bramble or something like that.

KISH ABUJI sworn:

EXAMINED BY MR. PHILLIPS:

Q.591. Are you an Abyssinian? -- A. Yes.

Q.592. And have you worked for the last 8 years as headman for Captain Harries? -- A. Yes.

Q.593. Do you know the two accused? -- A. Yes.

Q.594. Did they work on Captain Harries' farm? -- A. Yes.

Q.595. Do you remember the day when Mr. White was killed? -- A. Yes.

Q.596. Were the two accused employed on the farm at that time? -- A. Yes.

Q.597. What sort of work were they doing? -- A. Butchery work.

Q.598. Who was head boy of the butchery at that time? -- A. Njeroge.

Q.599. Did you see Mr. White on that morning? -- A. Yes.

Q.600. Before he was killed? -- A. Yes, at 6.30 a.m. he came out.

.601. And did you see him then? -- A. I saw him and he asked me for a horse.

.602. And then? -- . . . sent the syc to bring his horse. I stood beside Mr. White. Jerome then came.

.603. And was there any conversation between Jerome and Mr. White? -- A. Not at first.

.604. Was there afterwards some conversation? -- A. Yes.

.605. After that conversation was finished what did Mr. White do? -- . . . He rode the horse and wanted to go.

.606. Did he in fact go? -- A. Jerome started to go and Mr. White told him "perhaps you will lose your mouth's wages on account of the affair."

.607. At this time were either of the two accused present? -- The second accused was there.

.608. Was there any conversation between him and Mr. White at that time? -- . . . Yes but he heard the conversation.

.609. After the conversation did Jerome go away? -- . . . Yes he went and got the fowls.

.610. And what about the second accused Did he go away? -- . . . He had a wheelbarrow with him and the fowls were placed in the wheelbarrow and they went away.

.611. Who gave out the fowls? -- A. I did.

.612. Did Jerome and the second accused go away together or separately? -- A. They started to go away together. . . . turned to go away and I don't know whether they separated or not.

.613. How did the second accused take the fowls away? -- A. In the wheelbarrow.

.614. What did Mr. White do then? -- A. He rode away on the horse.

.615. In which direction? -- . . . He went round the bog.

.616. Was that in the direction of the butchery or another

direction? -- A. He turned round towards the butchery.

Q. 617. Did you see him go towards the butchery? -- A. Yes.

.618. And then what did you do? -- A. I was working where I was.

.619. Was that near the house or near the butchery? -- A. Near the house.

.620. And what was the next thing that happened? -- A. I finished my work at 3 o'clock. I remained outside on the verandah. Njeroge came running. Njeroge was shaking his hands up and down and asking "Where is the woman? where is the woman?"

.621. And then did Njeroge give you certain information? -- A. Yes.

.622. And then did you both go and report to Captain Harries? -- A. Yes.

.623. And then what did Captain Harries do? -- A. He went off.

.624. In the motor car? -- A. Yes.

.625. Did you go with him? -- A. Yes.

.626. And what did Njeroge do? -- A. He ran on his feet.

.627. And then did you go in the car with Captain Harries to the butchery? -- A. Yes.

.628. And did you find the body of Mr. White there? -- A. Yes.

.629. Did you see either of the accused at that time or not? -- A. No.

.630. Did you at that time or later make any search for the two accused? -- A. Not until the police officer arrived.

.631. What time was that? -- A. I think he arrived at 10 o'clock.

.632. Did you look for the accused then? -- A. He ordered us to look for them.

.633. Did you personally look for them? -- A. No.

Q. 634. Did you see them that day after Mr. White was killed?

A. No.

Q. 635. Did you see the first accused that morning at all?--

A. No I saw the second accused.

CROSS-EXAMINED BY MR LEAN

Q. 636. That morning Mr. White died were there people working in the pigsties -- Yes the pig boys were working.

Q. 637. And were the boys working in the garden? -- A. Yes the shamba boys were also working.

Q. 638. And were there any people in the huts near the butchery and kitchen? -- Yes.

Q. 639. When Njeroge first had the conversation with Mr. White Mr. White was angry with him? -- A. Not very angry.

Q. 640. That is the conversation near the stables? -- A. Yes.

Q. 641. Where did Njeroge say he had been the day before? -- A. Kibungon.

CROSS-EXAMINED BY MR. SAVILE

Q. 642. All the natives on Captain Harries' farm are very frightened of Captain Harries? -- A. Yes.

Q. 643. You know Nyamosi's hut? -- Yes.

Q. 644. It is quite near the kitchen and butchery isn't it? -- A. Yes.

Q. 645. And near Nyamosi's hut are a lot of other huts? -- A. There is a line.

Q. 646. And about 9 o'clock in the morning there would be a lot of people in those huts? -- A. Yes.

Q. 647. Women and children? -- A. Yes.

END RE-EXAMINATION

HIS HONOUR MR. JUSTICE THACHER: You have worked for Captain Harries for 6 years? -- A. Yes.

HIS HONOUR: And Mr. White had been there for about 5 years? -- A. Yes he came one year after me.

HIS HONOUR: And did you see him almost every day? -- A. Yes, every day.

HIS HONOUR: Was it a common thing for him to get angry with the labourers? -- . No, I have not seen him getting angry or abusing or beating.

HIS HONOUR: Am I to understand from that that you have never seen him strike anyone during the whole of the time you have been there? -- . I have not seen him strike anyone but he deducts one's wages.

HIS HONOUR: Was he liked or disliked? -- A. -- I don't know. I have not seen him quarrelling with anyone.

EXHIBIT ARAH SIANG ASSISTANT

EXAMINED BY MR. PHILLIPS:

Q. 648. What tribe are you? -- A. Lumbwa.

Q. 649. And do you work for Captain Harrison? -- A. Yes.

Q. 650. What sort of work? -- A. Pig boy.

Q. 651. Do you remember the day when Mr. White was killed? -- A. I don't know.

Q. 652. I don't want you to remember the date but on the day Mr. White was killed where were you? -- A. I was cleaning the piggery.

Q. 653. About what time of the day was that -- . 7.30 a.m.

Q. 654. And did you see Mr. White at that time? -- . No.

Q. 655. On that morning did you see Mr. White before he died? -- A. Yes he came down and I went to hold his horse for him.

Q. 656. Was that at the piggery? -- A. Yes.

Q. 657. Then what happened? -- . He went into the piggery to count the pigs; then he came out.

Q. 658. And then? -- A. When he came out he told me to call the Sokoni people to come and hold the horse.

Q. 659. Did anyone come? -- A. Yes I saw Abaha.

Q. 660. Do you see him in Court? -- . He is here.

- Q.661. Is he the first accused? -- A. Yes.
- Q.662. And you say he came and held the horse? -- A. Yes and I returned to the piggery.
- Q.663. Did you see where Wakahu went with the horse? --  
A. I handed the horse to him at the bridge and he walked towards the pig store.
- Q.664. Where is the pig store? Is that anywhere near the Sokoni? -- A. It is as far from the Sokoni as from here to that corrugated iron shed (about 150 yards).
- Q.665. Did you see where Mr. White went? -- A. I don't know because I went inside.
- Q.666. Did you see Mr. White after that? -- A. No.
- Q.667. When did you first hear that he had been killed? --  
A. My house is near the Sokoni. I went about 9 o'clock and then I found him lying on the ground.
- Q.668. Was anyone else there? -- A. I saw the big Swans' motor car there.

CROSS-EXAMINED BY MR. LEAH

- Q.669. When Wakahu came to take the horse from you did you see any Wandorobe women about? -- A. No.
- Q.670. Do you think you could have seen them if they had been there? -- A. Yes.

CROSS-EXAMINED BY MR. SAVILLE

- Q.671. The witness Vibe has told us that all the natives on the farm are frightened of Captain Harries. Is that so? -- A. Yes.

NO RE-EXAMINATION

OLYN WILLIAM MORGAN DAVID sworn;

EXAMINED BY MR. HARRAGIN:

- Q.672. Your name is Olyn William Morgan David? -- A. Yes sir.
- Q.673. Are you employed by Captain Harries at the Lake Butchery, Nakuru? -- A. Yes sir.

- Q.674. And do you live on Captain Harries' farm? -- A. Yes.
- Q.675. Do you remember the 2nd May? -- A. Yes sir.
- Q.676. Do you remember leaving the farm that day? -- A. Yes.
- Q.677. Where did you go to first? -- A. From the farm to the butchery.
- Q.678. At the butchery who did you see? -- A. I saw in the distance a few Wandorobo women and also 3 or 4 boys.
- Q.679. Do you know a boy called Sangura? -- A. Yes sir.
- Q.680. Did you see him? -- A. Yes.
- Q.681. What is his work? -- A. He is my assistant at the butchery.
- Q.682. Did you see him at the butchery? -- A. Yes he came to me there.
- Q.683. Did you see either of those two accused? -- A. I saw one in particular, No.1.
- Q.684. You say you saw him in particular. What exactly do you mean with regard to No. 1? -- A. I reversed my car and this boy came to the front.
- Q.685. And can you tell us anything about No. 2? -- A. I don't know whether he was there or not.
- Q.686. Where were these Wandorobo women? -- A. By the kitchen up on top of the bank (Indicates on plan).
- Q.687. Would you recognise them again? -- A. No sir.
- Q.688. Did you speak to either of the accused? -- A. I had a discussion with No.1 accused about fowls.
- Q.689. Where was that? -- A. At the car. I didn't get out of the car.

CROSS-EXAMINED BY MR. LEAN

- Q.690. At what time of the day was this conversation? -- A. Approximately 6.15 or 6.20 a.m.
- Q.691. It was just getting light? -- A. Yes it was just about light then.
- Q.692. Had it not been light very long? -- A. No.

NO RE-EXAMINATION

HIS HONOUR MR. JUSTICE THACKER: How long had you known Mr. White? -- A. From September 1937 till the day of his death.

HIS HONOUR: Can you tell me what his reputation was amongst the labourers on the farm? -- A. He had quite a good reputation.

HIS HONOUR: Had you ever at any time seen him strike one of the labourers? -- A. Never.

HIS HONOUR: Did they go about in fear of him? -- A. No, definitely not.

HIS HONOUR: Was he in the habit of abusing them if he was angry? -- A. No, never.

BUNDIRA MASAMBIR affirmed;

EXAMINED BY MR. PHILLIPS:

Q.693. Do you work for Captain Harries? -- A. Yes.

Q.694. And in the ordinary course of your work do you go into Makuru each day with Mr. David? -- A. Yes.

Q.695. On the day when Mr. White was killed did you go in with Mr. David as usual in his car? -- A. Yes.

Q.696. Where did Mr. David pick you up on the farm? --  
A. Near the butchery.

Q.697. About what time? -- A. 3 o'clock.

Q.698. Did you see any other people at the butchery at that time? -- A. I saw two women.

Q.699. Can you say what tribe they were? -- A. Andorobo.

Q.700. Did you know who they were? -- A. I don't know them by name but I know them by sight.

Q.701. Could you recognise them again if you were to see them? -- A. Yes.

Q.702. Are these the women (Suliani and Nawicka called into Court)? -- A. Yes.

Q.703. Where were they exactly on that morning? -- A. They



were warming themselves at the fire in the kitchen.

Q.704. Was anyone else there at that time? -- A. First accused was there.

Q.705. Do you know why the women were there? -- A. To clean cattle hides.

Q.706. Had you ever seen them there before? -- A. Every day then come.

Q.707. Then did Mr. David come in his car? -- A. Yes.

Q.708. And what happened when he came? -- A. We put sausages into the car and eight fowls.

Q.709. Did Mr. David have any conversation with anyone? -- A. No.

Q.710. And then what happened? -- A. Nothing more.

Q.711. Did you have any conversation with Wakahu that morning? -- A. No.

NO CROSS-EXAMINATION

BELEANI DYO-LONJUBI affirmed:

(Interpreter Fibiya ole Mbaraira sworn)

EXAMINED BY MR. HARRAGIN:

Q.712. Are you the wife of Kwita? -- A. Yes.

Q.713. And where do you live? -- A. On Captain Harries' farm.

Q.714. Do you remember the day Mr. White was killed? -- A. Yes.

Q.715. Did you know him? -- A. Yes he was called Swana Jack.

Q.716. Where were you that morning? -- A. I had gone there to look for hides.

Q.717. Gone where? -- A. To the Sokeni.

Q.718. What Sokeni? -- A. The butchery.

Q.719. Was anyone else with you? -- A. I was there with two other women.

- Q.730. What are their names? -- A. One is Kimariyisho and the other is Nasioku.
- Q.731. Did you go there together? -- A. Yes.
- Q.732. Is that a usual habit of yours to go to the butchery?  
A. Yes we go there daily to skin the hides.
- Q.733. About what time did you go there? -- A. We leave our place when it is still dark and arrive there about 7 a.m.
- Q.734. When you got there that morning whom did you see? --  
A. We saw these people the accused. They went to get fowls.
- Q.735. Did both the accused go to get fowls? -- A. Yes.
- Q.736. Was there any other man there? -- A. There were three men.
- Q.737. Do you mean these two and another man? -- A. Yes and another man named Njeroge.
- Q.738. And you saw two of them go to get fowls? -- A. Yes I saw these two bring the fowls and place them outside.
- Q.739. And what about Njeroge? What did he do? -- A. He took some milk in a bottle inside the house.
- Q.740. Inside what house? -- A. The sleeping house.
- Q.741. Did you see Bwana Jack that morning? -- A. Yes I saw him coming after the Kikuyus.
- Q.742. Who are the Kikuyus? -- A. Those who brought the fowls.
- Q.743. You have told us these two brought the fowls? --  
A. Yes.
- Q.744. When Bwana Jack came up where did he go to first? --  
A. Into the pigsty.
- Q.745. After that what did he do? -- A. He stood near the pigsty and called out for Wakenya.
- Q.746. That is not accused? -- A. Yes.
- Q.747. To do what? -- A. To go and hold his horses.

Q.738. Did he go and hold the horse? -- A. Yes he came out of the house and went to hold the horse.

Q.739. Where did he hold the horse? -- A. Near the piggery.

Q.740. Did he keep it there all the time? -- A. He came from the piggery to the butchery.

Q.741. What did Evans Jack do? -- A. He also remained a short time over there and then he came to this side.

Q.742. By this side am I to understand that you still mean the butchery? -- A. Yes and he went inside the building.

Q.743. Did he come out again? -- A. Yes.

Q.744. When he came out of the butchery did he speak to anyone? -- A. Yes he came and stood near the horse and spoke to the man who held the horse.

Q.745. That was still No.1 accused? -- A. Yes.

Q.746. What did he say to him? -- A. The Evans looked inside the kitchen and then I heard him speaking to the man. I heard him say "Now is it that you don't do the work properly".

Q.747. What did No.1 accused reply to that? --

MR. LEAN: My Lord I don't think that is evidence, what the witness heard one person say to another and the other replying is surely not evidence.

HIS HONOUR: My own view is that it is admissible. I don't know quite on what grounds you object.

MR. LEAN: Merely on the grounds that it is hearsay.

HIS HONOUR: I don't want to admit anything that is in the least likely to prejudice the accused or either of them.

MR. MARRAGIN: I am afraid, Your Lordship, I do not understand the meaning of the word "hearsay" as used by my learned friend. Here we have the deceased and accused No.1 having a conversation immediately

before the alleged killing and I submit it would be absolutely wrong for you to suppress it.

HIS HONOUR: You mean it might be in the interests of the accused to have it?

MR. HARRAGIN: Yes, my Lord.

MR. LEAH: I am in Your Lordship's hands.

HIS HONOUR: I overrule the objection but I will take a note of it.

Q.748. What did the accused reply to Buana Jack? -- A. He replied "I work all right every day".

Q.749. What happened then? -- A. The Buana replied "You do not work properly. You will remain here. You will do nothing else but my work all day".

Q.750. What did No. 1 accused reply to that? -- A. The deceased also said "You will not make a fire". The accused replied "How can I work the whole day and night without a fire and without getting sleep".

Q.751. What happened then? -- A. At that Buana Jack replied "If you refuse to do the work go and bring your registration certificate and I will take it to Captain Harries to sign you off". The accused replied "If I had my registration certificate here I would not give it to you because I am employed by Captain Harries and he is your employer as well".

Q.752. What happened then? -- A. Then the Mikuyu said that the Buana got angry and slapped him. (Demonstrates)

Q.753. Did he strike him with the right hand? -- A. Yes.

Q.754. And which side of the accused's face was struck? -- A. The right side.

Q.755. When the accused was struck what did he do? -- A. He ran away into the building.

Q.756. What building? -- A. The kitchen.

- Q.757. What happened next? -- A. Buana Jack followed him there. Then we ran round as far as from here to the corner of the office (50 or 60 feet).
- Q.758. Why did you move? -- A. Because we saw people fighting and we were afraid.
- Q.759. But you have told us nothing about a fight. What fight took place? -- A. After the accused was slapped by the Buana he ran to the kitchen and was followed by the Buana. They went inside the kitchen and we noticed the Buana bleeding from the wrist.
- Q.760. Could you see inside the kitchen? -- A. Yes we were peeping, and we could see.
- Q.761. When accused No.1 ran into the kitchen did you see anything in his hand? -- A. He had nothing outside because he was holding the horse.
- Q.762. Then you saw Buana Jack go into the kitchen and you saw a cut on his wrist? -- A. Yes.
- Q.763. But how did he get that cut? -- A. He got it near the door of the kitchen.
- Q.764. How did he get it? -- A. We saw them wrestling near the door of the kitchen.
- Q.765. Do you mean Buana Jack and the accused? -- A. Yes.
- Q.766. Had either of them got anything in his hand? -- A. We saw a knife, part of the blade but we couldn't see properly.
- Q.767. You saw it where? -- A. We saw the blade part.
- Q.768. Where was the blade part? -- A. We saw a small portion of the knife held by the Kikuyu.
- Q.769. No.1 accused? -- A. Yes.
- Q.770. And you also saw a cut on Buana Jack's wrist? -- A. Yes.
- Q.771. And you also said they were struggling together? -- A. Yes.

- Q.772. What happened next? -- A. They came out still struggling. Then Buana Jack came outside with No.1 accused the other two Kikuyus who were inside the building came outside also.
- Q.773. Came outside from where? -- . They came from the kitchen, the second accused and another.
- Q.774. Do you know the name of the other? -- A. Njeroge.
- Q.775. Did they come out of the same building that the struggle had been going on in? -- A. Yes.
- Q.776. Well when they came outside what happened? -- A. We saw No.2 come from behind and hold the Buana by the waist and he then held him lower down by the legs. Njeroge then came by the left side of the Buana and we noticed Wakahu stab the deceased in the chest.
- Q.777. At the time Wakahu stabbed the deceased in the chest what was No.2 doing? -- A. At that time he was holding the deceased by the knees.
- Q.778. Had you seen Buana Jack strike No.2 in any way? -- A. When they were wrestling we could see thrusts with the hand but we could not see properly.
- Q.779. Whose hand? -- A. Buana Jack's.
- Q.780. Who was he thrusting at? -- A. At No.2 accused.
- Q.781. And what was No.1 doing meanwhile? -- A. We saw Wakahu stabbing the Buana in the chest and we run away.
- Q.782. How long were they struggling before the stabbing took place? -- A. The struggle was very short.
- Q.783. And what happened to Buana Jack when he got this stab? -- A. After we saw the stabbing we went away and didn't see anything else.
- Q.784. Before the last fight took place did you see anyone going into the butchery? -- A. No.

- Q.785. Before the stabbing? -- A. They went into the butchery and fought there.
- Q.786. Are you indicating that there were two fights, one at the kitchen and one at the butchery? --  
A. The struggle took place between the kitchen and butchery.
- Q.787. Before the struggle did you see anybody go into the butchery? -- A. No, we didn't see any other one.
- Q.788. I have not talked about any others. After Dwana Jack slapped No.1 accused did anybody go into the butchery? -- A. Yes Wakahu Pan and entered the butchery.
- Q.789. Do you mean that he went into the butchery and not into the kitchen as you said before? -- A. First of all he ran into the kitchen and after he cut the Dwana on the wrist they struggled outside.
- Q.790. You told me a moment ago that when Wakahu was slapped he had nothing in his hand, and afterwards you told me that he had a knife in his hand? -- A. Yes after he had gone inside.
- Q.791. Inside where -- A. The kitchen where food is cooked.
- Q.792. Did you see a bit of firewood that morning? --  
A. Yes we saw No.3 accused come with a piece of firewood and try to strike the Dwana with it.
- Q.793. And did he strike the Dwana? -- A. No.
- Q.794. Why not? -- A. Njeroge took the stick away from him.
- Q.795. Is that while the struggle between No.1 and the deceased was going on? -- A. Yes.
- Q.796. And what did No.3 do when the firewood was taken away from him? -- A. He came from behind and

held Buana Jack by the waist.

Q.787. And the fight continued? -- A. Yes but it lasted only a very short time because it was men's fight.

HIS HONOUR: Mr. Attorney you might get her to show me whereabouts she was standing.

MR. HARRAGIN: I was afraid to put the plan to her. The only suggestion I can make is a visit to the scene.

HIS HONOUR: Yes I am coming to the conclusion that we must see the place.

CROSS-EXAMINATION RESERVED

COURT ADJOURNED AT 12.30 TILL 1.30

FOR VISIT TO SCENE



COURT VISITS SCENE OF CRIME

QUESTIONS BY COURT

Witness BELIANI D/O LONJUGI

- Q.798. Will you show us where you usually sit when cleaning hides? (Witness demonstrates)
- Q.799. Show us the spot where the two men placed the fowls when they brought them. (Witness demonstrates)
- Q.800. Where was Buana Jack when you first saw him? -- A. I saw him to the right of that building (Witness indicates pig store).
- Q.801. Where did Accused No. 1 hold the horse? -- A. When he was called he came out of the kitchen and ran to the other side of the piggery.
- Q.802. Point out where No. 1 Accused and Buana Jack stood when the Buana spoke to No. 1 Accused about the work being badly done. (Witness indicates spot between kitchen and butchery).
- Q.803. Where was the Buana when he hit No. 1 Accused on the face? (Witness indicates spot between kitchen and butchery).
- Q.804. Show us the spot you moved to after that. (Witness indicates spot near kitchen)
- Q.805. Where did accused No. 1 go after he was slapped? -- (Witness demonstrates that Accused No. 1 ran first to the butchery and then to the kitchen). A. The Buana followed him to the kitchen.
- Q.806. Where were you standing when you were peeping? -- A. When they went inside we came and stood at the corner of the kitchen and saw the Buana with his hand out (Witness demonstrates).
- Q.807. Where was the Buana standing when you saw his hand out? -- (Witness indicates spot near door of kitchen).

- Q. 808. Where was No. 1 accused when you first saw the knife? -- (Witness indicates).
- Q. 809. Where did No. 2 accused and the other man come from while they were still wrestling? -- A. When No. 1 accused and the Swana were here (indicates spot near kitchen) the other two came from the door of the kitchen.
- Q. 810. Show me the spot where the Swana was standing when No. 1 accused stabbed him in the chest. -- (Witness indicates).
- Q. 811. Where did you run to after that? -- A. I ran to those trees (Witness indicates).
- Q. 812. Stand facing in the direction in which Swana Jack faced when he was stabbed. -- (Witness demonstrates).
- Q. 813. Now show us the position of No. 1 accused at the time he is alleged by you to have stabbed. -- (Witness demonstrates).

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MABIOKU D/O TABOGHU affirmed:

- Q. 814. Where do you sit daily to clean hides? -- (Witness indicates).
- Q. 815. Stand where you were when you saw the struggle between Swana Jack and No. 1 accused. (Witness demonstrates).
- Q. 816. Did you move from there? -- A. During the struggle we went away from there.

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KIMANYISHO D/O SAPIANGEMERI affirmed:

- Q. 817. Show us where you go daily to clean hides. (Witness indicates).
- Q. 818. Show us the spot where you stood or sat when you saw

the struggle between Buena Jack and No. 1 accused.  
(Witness indicates).

Q. 819. Did you move away from there at all? -- A. Not until  
we left and went away.

COURT ADJOURNED AT 3.50 P.M. UNTIL  
9.30 A.M. TOMORROW

WEDNESDAY 27th July, 1933.

COURT RESUMED 9.30 a.m.

Witness BELIANI D/O LONJUGI

CROSS-EXAMINED BY MR. LEAN:

- Q. 820. When you arrived at the butchery on the day that Mr. White was killed what time of the day was it? --  
A. 7 o'clock.
- Q. 821. You are quite certain that it was not say 8.30? --  
A. The sun was a little up in the sky.
- Q. 822. Had the sun been up for an hour? -- A. The sun was a little up.
- Q. 823. And you are quite certain that the three of you Wandorobe women arrived at the butchery together? --  
A. Yes.
- Q. 824. Did you all sit together? -- A. Yes.
- Q. 825. And you did not move apart? -- A. We all sat at one place.
- Q. 826. Did any of you go into the kitchen to wash yourselves that morning? -- A. No.
- Q. 827. Which Kikuyu did you see at the butchery when you arrived? -- A. There was no one; the people had gone up to get the fowls.
- Q. 828. And you say it was these two accused who went to get the fowls? -- A. Yes.
- Q. 829. You are quite certain about that -- A. I know them very well except that I don't know the name of the second accused.
- Q. 830. At the preliminary hearing you said the tall Kikuyu Wakahu and the man named Njeroge went to bring the fowls. -- A. I spoke about all three but I said Njeroge took the milk and these brought the fowls.

- Q. 831. This is what you actually said: "Accused 1 and 5 went to get some fowls, accused 1 went into the kitchen and accused 5 went off with a bottle of milk to their hut near the butchery". -- A. Yes.
- Q. 832. Which is correct? -- A. I said these two were holding the fowls and the other one was holding the milk and they all three came together.
- Q. 833. You didn't see who went away from the butchery to fetch the fowls and milk? -- A. I didn't see them going.
- Q. 834. Yesterday you said after the accused had come back with the fowls you saw Bwana Jack riding down the road and when he got to the piggery someone called Accused No. 1 and he went over there to hold the horse? -- A. Yes.
- Q. 835. Who was that someone? Was it Bwana Jack? -- A. Bwana Jack asked someone to call out and someone called out.
- Q. 836. You said you saw Bwana Jack hit accused No. 1 on the face with the palm of his hand. Was that a hard blow? Was it the sort of blow that would hurt Wakahu? -- A. Yes because he staggered.
- Q. 837. Here in this Court you said Wakahu then ran to the kitchen -- A. First of all he ran to the lower building and then he came out to the top building.
- Q. 838. That is what you told us when you saw the place yesterday afternoon. -- A. Yes.
- Q. 839. You never saw Bwana Jack receive the cut on the wrist? -- A. I did not see him being cut but when he came out I saw his hand was cut.
- Q. 840. When he came out of where? -- A. When he came out of the upper building.
- Q. 841. Was it the one with the corrugated iron roof or the thatched roof? -- A. The corrugated iron roof.

- Q.842. You did not see any fight in the butchery, the building with the thatched roof? -- A. He ran to that building and then he came up to the other building.
- Q.843. Did you see a knife in the hand of Wakahu in the butchery building? -- A. No.
- Q.844. I am going to tell you what you said at the preliminary hearing: "Then the Buana hit him on the face with the flat of his hand. Then we stood up and accused ran off into the butchery and Mr. White followed him at a run. Wakahu turned round just inside the doorway and I saw him with a knife in his hand. Mr. White tried to ward off the blow and got a cut on the left wrist. The knife was like the one they use for killing pigs" which statement is true? -- A. I said that he ran to the lower building and I did not see the knife until he came to the second building and I saw only a small portion of the knife.
- Q.845. Do you say what is written in your deposition is not what you said? -- A. I was surprised when I saw the fight and I was trembling.
- Q.846. In fact you don't really know what happened at all? -- A. No.
- Q.847. What do you mean by No? -- A. I don't know where the knife was got from.
- Q.848. You were very frightened when you saw all this happen? -- A. Yes.
- Q.849. And you ran away? -- A. When I saw the Buana stabbed I ran away.
- Q.850. You ran away really before that happened. -- A. First I saw the stabbing and then I ran away.
- Q.851. It was a longer knife than this one wasn't it? -- A. It was a knife similar to this but I only saw the point.

- Q.852. When you saw Sakahu stab the Buana had he still got the knife in the same position as you showed us just now? -- A. Yes. (Witness demonstrates).
- Q.853. You will agree that holding the knife like that only a small portion would go in? -- A. I saw the knife held like that.
- Q.854. Why didn't you call out for help? -- A. We didn't think of crying out because we were surprised.
- Q.855. You liked Buana Jack did you not? -- A. Yes.
- Q.856. You knew there were lots of people near by? -- A. Yes I knew there were people there.
- Q.857. Is it not usual for women when they see a stabbing or anything like that to give the alarm or cry out for help? -- A. People at home would cry out but when we saw he had killed the Buana we thought he would kill us as well and that is why we ran away.
- Q.858. When you ran away where did you run to? -- A. I ran as far as those trees outside the Court (about 150 yards).
- Q.859. Did you run back to your home? -- A. When I was still running I looked behind and I saw these two Kikuyus running following me.
- Q.860. And you hid in the grass? -- A. I got into the bush.
- Q.861. Could they have seen you? -- A. Yes they saw me and I saw them.
- Q.862. Well now at the preliminary hearing you said: "Accused didn't meet me by the time when he ran off"? -- A. I said that when I was running I saw accused No. 2 in front of me and then I made a detour.
- Q.863. You saw him in front of you? -- A. I saw him behind me but in front of the other man.

- Q.864. Were you still near the buildings and other people?  
A. In the bush near Isana Samaki's shamba.
- Q.865. Can you speak Swahili? -- A. I understand but I cannot speak properly.
- Q.866. Can you understand it well? -- A. Yes.
- Q.867. Can you understand Swahili if it is spoken quickly? --  
A. Yes I understand.

(At request of Mr. Lean the depositions of this witness are put in as Exhibit 14)

CROSS-EXAMINED BY MR. SAVILLE.

- Q.868. You say you understand Swahili? -- A. Yes.

MR. SAVILLE: With your permission My Lord I would like to give a Swahili test to the witness.

HIS HONOUR MR. JUSTICE THACKER: Yes.

MR. SAVILLE: I would ask the interpreter to say the following sentence in Swahili: "Where do you people go in off every day so that the work is spoiled in this way?" (Translated into Swahili and repeated exactly by the witness in her own language).

- Q.869. When the fowls were brought into the compound where were they put? -- A. They were placed there.
- Q.870. Whereabouts? -- A. To the left of the upper building, the corrugated iron building.
- Q.871. Where all the feathers were yesterday? -- A. Yes.
- Q.872. Who put them there? -- A. Wakahu and the other whose name I don't know.
- Q.873. Both of them? -- A. Yes and the other one took the milk away.
- Q.874. What did they do after they put the fowls down? --  
A. They went into the upper building.
- Q.875. Both of them? -- A. Yes.



- Q.876. Did either of them come out after that? -- A. They did not come out until Buana called out and Wakahu went.
- Q.877. And did the Accused No. 2 stay there all the time? -- A. Yes.
- Q.878. Don't they kill these fowls when they bring them in the mornings -- A. First of all they come and place the fowls there. They go inside the building and do their work and when that is finished they come and start taking off the feathers.
- Q.879. Did you see one fowl loose away from the others? -- A. No I saw all the fowls together.
- Q.880. In a crate? -- A. Yes.
- Q.881. Could any fowl get out of that crate? -- A. No not until it was loosened.
- Q.882. When they kill these fowls and pluck them do they take them out one at a time? -- A. Yes they take one by one and strangle and pluck them.
- Q.883. Is it true that accused No.2 used to do the killing and plucking of the fowls? -- A. Yes that was his daily work.
- Q.884. In that morning when Mr. White was killed was any other white man near the butchery before he arrived there? -- A. No.
- Q.885. Did any other native come there before he was killed? -- A. We did not see any other except the three Kikuyu the white man and we three women.
- Q.886. I suppose there was a lot of noise when this fight was going on? -- A. There was noise when the horse was being held out not when the fight was going on.

- Q. 887. What noise was going on? -- A. The Swana was asking Wakahu about the work and there was the noise of the quarrel.
- Q. 888. And did the Swana shout very loudly? -- A. Yes and the accused also shouted loudly.
- Q. 889. You know the labour lines there? -- A. Yes.
- Q. 890. And there are people in those huts, women and children? -- A. Yes but we don't go to ascertain how many people there are there.
- Q. 891. Could they have heard the shouting? -- A. They could not hear.
- Q. 892. Coming to this fight, it is true that Swana Jack chased the first accused towards the butchery? -- A. Yes.
- Q. 893. That is after he had smacked him on the face? -- A. Yes.
- Q. 894. How close behind was Swana Jack when he was chasing first accused? -- A. Seven feet.
- Q. 895. When the first accused got to the butchery door was the Swana still that distance away? -- A. When he got to the butchery door the Swana was much closer and as the Swana was about to grip Wakahu he turned round.
- Q. 896. How did he get past the Swana? -- A. He turned round to the side of the Swana and went up to the other building.
- Q. 897. But they were both struggling in the doorway at the same time? -- A. They did not struggle there. Wakahu slipped off and they held one another at the upper building.
- Q. 898. Were they both in the butchery door at the same time? -- A. They did not go right into the butchery. The Swana came up to the door but did not go inside and the Kikuyu went one past inside.

- Q.899. When the first accused was one pace inside the door Swana Jack was actually at the doorway? -- A. Yes.
- Q.900. You saw no blow struck at the Swana at that spot --  
A. No we saw the accused run away from there.
- Q.901. Did the Swana try and hit or attack accused there? --  
A. The Swana tried to catch him with both his hands from behind because Wakahu was running.
- Q.902. And then they both ran into the kitchen? -- A. Yes.
- Q.903. You didn't see what happened inside the kitchen? --  
A. No.
- Q.904. You actually saw the Swana stabbed outside the kitchen? -- A. Yes.
- Q.905. Did No. 2 accused follow Swana Jack and No. 1 accused or did he come out of the kitchen first? --  
A. When Swana Jack and first accused came out then the other two came out.
- Q.906. How long afterwards? -- A. Very shortly afterwards.
- Q.907. And by that time Swana Jack and the first accused were having a very serious struggle? -- A. Yes.
- Q.908. And did the other two try and part them? -- A. I saw the man who is outside come to the left of the Swana and I saw the second accused holding the Swana by the buttocks.
- Q.909. Surely you told us a short time ago that he was holding him round the waist? -- A. He held him round the waist and then his grip was lowered to the knees and then the stabbing took place.
- Q.910. Did you see the Swana fall? -- A. No, we ran away.
- Q.911. Do you know that that blow you saw being delivered to the Swana was the one that killed him? --  
A. No.
- Q.912. Did you ever discuss this thing from that time? --  
A. I myself did not converse with anybody else. I went home and kept silent.

- Q.913. Did anybody speak to you about it? -- A. I was not asked by anyone else except Captain Harries.
- Q.914. When did you first know Buana Jack had died? --  
A. I heard the day Buana Harries came to call us.
- Q.915. That is three days after the fight? -- A. The following morning we were called.
- Q.916. Until the following morning you didn't know Buana Jack had died? -- A. No because after I ran away I remained in the bush till late at night and then I went home.
- Q.917. Did you run off alone? -- A. I ran alone and the other two ran together.
- Q.918. Will you tell the Court why you were so frightened of telling anybody about this? -- A. I did not tell anyone because I was surprised and I saw the Buana struck with a knife and he was the one who was marking our tickets.
- Q.919. But you didn't know he was killed? -- A. I did not see him die but I was saw the blow delivered.
- Q.920. Do you get paid for this work you do cleaning the hides? -- A. No but we are given that work.
- Q.921. When you saw the second accused gripping the Buana was he gripping him hard or gently? -- A. They gripped with one another very hard.
- Q.922. I am talking about the second accused gripping the Buana? -- A. Yes we saw him grip the Buana hard.
- Q.923. Very hard? -- A. Yes.
- Q.924. And when he got him round the knees was that also hard? -- A. At that time we ran.
- RE-EXAMINED BY MR. HARRAGAN
- Q.925. What did you think the second accused was trying to do to the Buana? -- A. I couldn't tell the reason.

Q. 986. What did you think when you saw No. 2 grip him? What was he trying to do to the Swann? --

MR. SAVILLE: My Lord, I object to that. I think the learned Attorney General is asking the witness to assume the functions of the Court. What she thought is completely immaterial.

OBJECTION OVERRULED.

Q. 987. What did he appear to be attempting to do? --

A. From appearances the Swann was stronger than Wakahu and No. 2 wanted to help Wakahu.

Q. 988. How far away do you live from this place? -- A. As far as from here to the D.C.'s lines (4 miles).

Q. 989. Do you live in the forest? -- A. We live at the boundary of the forest.

Q. 990. You told my learned friend that the Swann followed Wakahu to the butchery. You then said that Wakahu slipped past and ran back to the kitchen and the Swann followed him. When the Swann was following him back to the kitchen how far was he behind them? -- A. About 15 feet.

Q. 991. Did you see with your own eyes Wakahu go into the kitchen? -- A. We did not see him going right inside the kitchen.

Q. 992. Therefore it would be equally true that you don't know if the Swann went inside the kitchen? -- A. I don't know whether he went right inside or whether they met in the door.

Q. 993. Am I right in saying that you saw them both running in the direction of the kitchen and the next thing you saw was the fight? -- A. Yes we next saw the Swann at the door with a cut on his wrist.

Q. 994. Do you remember telling us about a piece of wire cut at yesterday? -- A. Yes.

Q.935. And you also said yesterday that No. 2 had it in his hand? -- A. Yes.

MR. SAVILLE: My Lord, I must object. This doesn't arise out of the cross-examination.

MR. HARRAGIN: I am merely leading her up to a certain point in the fight. She has already deposed to the firewood and I am trying to get the position of the stabbing.

HIS HONOUR: I allow it so far.

Q.936. e have got to the stage where you saw the Buana had a cut on his wrist. You didn't actually see it done? -- A. No.

Q.937. What I want to know is how did the Buana get from the door of the kitchen where you saw the fight starting to the spot you pointed out as the place where he was stabbed? -- A. Wakahu and the Buana were holding one another and pushing.

Q.938. And do you mean by that that the Buana was pushed back that distance? -- A. Both two were struggling.

Q.939. And in the struggle they moved back to the spot you showed us? -- A. Yes.

Q.940. And at what stage in that struggle between the door and the spot where the blow occurred did you see accused No.2? -- A. He came about a pace away from where the Buana was stabbed.

HIS HONOUR: Don't say if you do not know, but do you think the Buana saw you and the other two women just before the struggle started or while it was going on? -- A. Yes the Buana saw us.

HIS HONOUR: While the struggle was going on? -- A. Yes and when he was stabbed he saw us.

HIS HONOUR: Did he call out to you or appear to call out?--

A. No.

HIS HONOUR: Could Accused No. 1 see you? -- A. He saw us when the quarrel was taking place but during the struggle he could not see us because his attention was attracted by the struggle.

HIS HONOUR: But Swana Jack's mind was not attracted to the struggle? -- A. He could see us during the struggle because we were close by but when he was stabbed he was facing the other way.

KIMANYISHO D/O SAPIANGHERRE affirmed:

EXAMINED BY MR. PHILLIPS:

- Q.941. Are you an Merohe? -- A. Yes.
- Q.942. Where were you when Swana Jack was killed? -- A. I was at the butchery.
- Q.943. Was anyone else with you? -- A. Nasioku and Beliani.
- Q.944. Was Beliani the last witness? -- A. Yes.
- Q.945. What did you go there for? -- A. We went to prepare the cattle hides and cattle legs.
- Q.946. I want you to describe what you actually saw with your own eyes. Did you see Swana Jack arrive there that morning? -- A. Yes we saw him come to the piggery, and he called out to Accused No.1
- Q.947. And what did Accused No.1 do? -- A. He came out of the building and went and held the horse.
- Q.948. And after that? -- A. Then he came over to this side and stood in the open space in the middle.
- Q.949. Do you mean the space between the butchery and the kitchen? -- A. Yes.
- Q.950. And did you see what Swana Jack did? -- A. He entered the butchery by the side where the pork is kept and came out by the other door where the beef is kept.

- Q.951. What happened then? -- A. When Bwana Jack came out of the butchery he called out to Samuel.
- Q.952. Who is Samuel? -- A. The man who is outside. I don't know his other name.
- Q.953. Is this the man? (Njeroge produced) -- A. Yes.
- Q.954. And what did he say? -- A. He called to Samuel and asked him "Where do you go every day so that the work is spoiled in this manner? Do you go to school or do you go to look for girls?"
- Q.955. And then what happened? -- A. After Bwana Jack said that to Samuel he went over to accused No.1 and told him "You will have to do my work the whole day until midnight". Then accused No.1 said he could not work till that hour because he would be sleeping in the morning. When they were arguing about that the Bwana asked him to go and get his registration certificate to be signed off but accused replied that he could not produce his registration certificate as Bwana Jack was an employee as well as accused himself.
- Q.956. What happened then? -- A. Accused also said that if Captain Harries demanded the registration certificate he would straight away give it to him and if he signed him off he would go. When accused replied to the Bwana like that the Bwana thought he was being despised and he slapped him. After accused was slapped he let go the horse and ran towards the lower building.
- Q.957. Is that the one with the grass roof? -- A. Yes.
- Q.958. And what did the Bwana do then? -- A. The Bwana was following him also running. The accused got inside the building and as Bwana was about to go in accused slipped off and ran towards the upper building.



- Q. 959. Did you see them actually go inside the upper building? -- A. Yes I saw them with my own eyes because I was at the side.
- Q. 960. From where you were could you actually see the door of the kitchen? -- A. We could see by heading over.
- Q. 961. Did you see if Wakahu and the Swana actually went into the kitchen? -- A. We didn't see properly whether they had gone right inside but we saw them near the door and then they came out away from the door.
- Q. 962. And when was it that you first saw the cut on the Swana's wrist? Was it when they came away or when they were at the door? -- A. Near the door.
- Q. 963. And then when they moved away from the door what were they doing? -- A. They were struggling and pushing one another and No. 2 accused came and caught the Swana by the hips.
- Q. 964. From in front? -- A. No from behind.
- Q. 965. What did he appear to be trying to do? -- A. He was helping the other.
- Q. 966. Which other? -- A. No. 2 was holding the Swana by the hips and the Swana was fighting with No. 1 and after he was stabbed we went away.
- Q. 967. Who did the stabbing? -- A. Accused No. 1.
- Q. 968. Did you see what he did it with? -- A. With a knife because we saw the glittering of the blade.
- Q. 969. Did you see where he stabbed the Swana? -- A. We saw because it was in the open and there were no trees and we saw the knife going into the body and then we ran away.
- Q. 970. Did you see Wakahu strike the Swana only once or

more than once? — A. We only saw one blow and then we ran away.

Q.971. Did you notice the knife before you saw Wakahu stab the deceased? — A. No.

Q.972. Did you see Njeroge at that time? — A. He came like a person intending to separate but he was defeated by them.

Q.973. Did you see if the second accused had anything in his hand? — A. When No. 2 came out from the kitchen he had a small piece of wood. I don't know whether it was fuel. He wanted to strike the Bwana but Samuel took it away from him.

Q.974. Could you tell on what part of the Bwana's body he was going to strike him? — A. On the head.

Q.975. And at the moment when Wakahu stabbed the Bwana in the chest what was second accused doing? —

A. He was holding the Bwana by the hips.

Q.976. Where were you when all this happened? — A. The place where I showed you yesterday when I was bending forward to see.

Q.977. Did you see what happened to the Bwana after he was stabbed? — A. We did not see anything else. We ran away and we don't know whether he fell down or not.

CROSS-EXAMINED BY MR. LEAH

Q.978. At what time of day did you go to the butchery? — A. 7 o'clock.

Q.979. You are quite sure it was seven? — A. The sun was slightly up.

Q.980. Had it been up for say an hour? — A. No it had only gone up very little.

Q.981. Did you see any other Bwana at the butchery that morning? — A. No I saw 3 Kikuyu and 1 Bwana.

- Q. 982. You are certain you didn't see any other Buana or any other Kikuyu or Lumbwa at the butchery? —  
A. I cannot tell a lie. I didn't see any other Buana.
- Q. 983. Did you and Beliani and Nasioku all arrive at the butchery together? — A. Yes.
- Q. 984. And you said you stood together all the time when you were at the butchery? — A. Yes we were waiting for the hides.
- Q. 985. None of you went into the kitchen? — A. No.
- Q. 986. You are quite certain of that? — A. Yes.
- Q. 987. Did you see either of the accused or Njeroge go to bring fowls from Buana Harries' house? —  
A. Yes they brought fowls in a crate and they placed it outside and they went inside.
- Q. 988. Were they all carrying fowls or only two? — A. These two had the fowls and the other one was getting a bottle of milk and he took it away.
- Q. 989. Had they a wheelbarrow with them? — A. No.
- Q. 990. Did you see Buana Jack die? — A. No.
- Q. 991. You were only told that he died? — A. On that day we only saw the stabbing.
- Q. 992. Who told you Buana Jack had died? — A. One man named Taya was sent by Mr. Harries to go and call the Wandorobo and see whether they were there.
- Q. 993. When you say Taya came to call the Wandorobo to see whether they were there what do you mean by that? — A. Whether they were at the sokoni.
- Q. 994. Did you and Nasioku and Beliani talk about this matter between yourselves? — A. No and we can't live in the same place and we cannot speak together. We were stupefied and we could not talk about it.

- Q. 995. What do you mean when you say you were surprised and could not talk together? -- A. We were surprised because we saw the Buana stabbed and it is natural for women when they see people fighting to be shocked.
- Q. 996. Since you have been in Nakuru during the course of this trial have you not talked about the case together? -- A. No we have not talked together because we don't know this place and we think we will be killed.
- Q. 997. When the Buana hit Wakahu on the face and Wakahu was holding the horse did he hit him hard? -- A. Yes because the Buana was angry.
- Q. 998. And did the accused stagger? -- A. Yes and when he ran he was not running properly, he was staggering.
- Q. 999. Which side of the face was the accused hit on? -- A. On the left side.
- Q. 1000. Are you quite sure about that? -- A. I don't know which side of the face.
- Q. 1001. Did you see the accused spit blood or anything like that when he had been hit? -- A. No.
- Q. 1002. You say the accused ran off to the butchery? -- A. Yes I saw him running to the butchery. I don't know whether he got anything out of that building or not.
- Q. 1003. You didn't see him with anything in his hand when he came out of that building? -- A. We did not see. We saw the cut on the Buana's wrist after they had reached the upper building.
- Q. 1004. In the Lower Court you said "The Buana then was very angry and smacked his face with his open hand, and the moment he was struck the Kikuyu left the horse he was holding and ran into the butchery."

The Buana ran after him and was just going to go through the door when he met accused who had turned round to face him and had a knife in his hand which he picked up I don't know where." Did the accused No.1 have a knife in his hand when he was at the butchery door or not? --

A. He did.

Q.1005. At the butchery? -- A. Yes at the butchery door.

Q.1006. You have just told the Court that you did not see a knife in the accused's hand until the actual fight? -- A. I said that I did not see him with a knife when he was holding the horse.

Q.1007. What you said was "I had not seen the knife before the Buana was stabbed". -- A. I saw the cut on the wrist, then the struggling and then the stabbing.

Q.1008. Where was Buana Jack out, at the butchery or the kitchen? -- A. The upper building I don't know whether it is the kitchen.

Q.1009. Was that the building with the corrugated iron roof or the one with the thatched roof? -- A. The building with the corrugated iron roof.

Q.1010. Was Buana Jack facing you when he was actually stabbed in the chest? -- A. The Kikuyu was facing us.

Q.1011. Could you see the Buana's back when he was stabbed? A. He had his right shoulder pointing towards us.

Q.1012. Had Accused No.1 his back towards you or his face towards you? -- A. He was going round and round and we couldn't see properly.

Q.1013. In fact you could not see very much of what happened at all? -- A. How could we see? Would the Buana die for nothing?

Q.1014. I put it to you that you saw a little bit, Nanioku saw a little bit and Beliani saw a little bit and you have talked it over and you know now what happened? -- A. No we haven't talked it over.

Q.1015. And I put it to you that you and Beliani have at some time or another since the first hearing talked about this matter together? -- A. No we separated.

Q.1016. Will you explain why at the preliminary hearing you and Beliani told very much the same story and now you still tell very much the same story but the two stories are different? -- A. It was the thing we saw.

Q.1017. Didn't you even tell your husband about this? -- A. We told him after we were called.

Q.1018. Not before you were called? -- A. Not a single word.

Q.1019. Why didn't you call out for help when you were running away? -- A. Because we women are afraid of blood and if we see fighting each woman seizes a child and runs into the bush.

Q.1020. Why didn't you run away when you first saw the quarrel? -- A. We thought it was going to be a small fight but when we saw it had become a big fight we ran away.

Q.1021. When Buana Jack was talking to Njeroge and to No.1 accused before the fight started was he speaking in a loud angry voice or not? -- A. He spoke loudly because these had not worked properly.

Q.1022. Would people standing at the piggery have been able to hear what was said? -- A. They could have heard but we didn't see a single soul seeing to lock.

- Q.1023. Did you see a woman named Agnes that day? -- A. No.  
Q.1024. Do you know Agnes? -- A. No.

CROSS-EXAMINED BY MR. SAVILLE

- Q.1025. Did you see some people bring some chickens to the butchery -- A. Yes we were sitting down and people came.  
Q.1026. Who were those people? -- A. These two accused.  
Q.1027. And what did they do with the chickens? -- A. They placed them in a crate.  
Q.1028. And where did they put the crate? -- A. Near the kitchen where I showed you yesterday where there are feathers.  
Q.1029. Could the fowls get out of that crate? -- A. No because there is a cover.  
Q.1030. Was the accused No. 2 wearing the same clothes as he is wearing to-day? -- A. Don't annoy me. I did not see those clothes.  
Q.1031. Do you mean that he was not wearing those clothes? -- A. I did not see those clothes.  
Q.1032. Did you see any of the Kikuyus wearing a hat? -- A. No.  
Q.1033. Did you ever see a hat at that time and place? -- A. No we didn't see whether they had hats on.  
Q.1034. Is that one of the things you forgot to talk about? -- A. With whom.  
Q.1035. With Beliani and Nasioku? -- A. We cannot teach one another what to say. Myself and the other woman have grey hairs; only Beliani is young.  
Q.1036. Have you people been scraping hides at that place since that time? -- A. We don't go to the same place now. We go to the Bwana's house.  
Q.1037. All together? -- A. Yes.  
Q.1038. You said you saw accused No. 2 with a piece of wood in his hands? -- A. Yes.

- Q.1039. What happened to the piece of wood? You said Njeroge took it away? -- A. Yes when accused tried to strike Swana.
- Q.1040. Where did it go to? -- A. Samuel threw it away when he got possession of it.
- Q.1041. In which direction did he throw it? -- A. I saw him throw it but I don't know where.
- Q.1042. Is that another thing you have forgotten to talk about? -- A. We have not talked about it. Beliani is the young one and she would have been able to see where it was thrown.
- Q.1043. Do you think I have asked Beliani this question?-- A. You are asking me. Did you not ask Beliani
- Q.1044. Did Swana white have a hat on his head when he arrived at the butchery? -- A. Yes.
- Q.1045. What happened to his hat? -- A. When the fight was going on I don't know how it disappeared.
- Q.1046. You said that when you women see blood you each grab a child and run away. Is that true? -- A. Yes because we are afraid of men fighting.
- Q.1047. Why didn't you run away when you saw blood on Swana white's wrist? -- A. We saw it was a small cut and we thought the fight would be over and then we would go on with our work.
- Q.1048. When the fight first started where was Njeroge?-- A. At first the Swana called him and he came from his house.
- Q.1049. When the Swana hit the first accused where was Njeroge? -- A. In the kitchen.
- Q.1050. I thought you didn't know which was the kitchen?-- A. Now I have heard you calling this place the kitchen and I know.
- Q.1051. Well which place is it -- A. When you say a kitchen I think it is a building like this.



- Q.1052. Oh I see, you think this Court is a kitchen do you?  
A. I don't know whether this is a kitchen or not. We call it a building.
- Q.1053. Do you call the building lower down a kitchen? --  
A. Yes even the meat building we call a kitchen.
- Q.1054. And which kitchen was Njeroge in when the Bwana hit the accused? -- A. The upper one.
- Q.1055. Where was No.2 accused at that time? -- A. In the building preparing the fire.
- Q.1056. Which building? -- A. The upper building.
- Q.1057. Was he actually preparing the fire when the Bwana struck the first accused? -- A. Yes.
- Q.1058. And what was Njeroge doing inside there? -- A. When he was called by the Bwana he came and stood outside the door.
- Q.1059. When the first accused was hit by the Bwana what was Njeroge doing? -- A. He was sitting because he is the head boy.

NO RE-EXAMINATION

HIS HONOUR MR. JUSTICE THACKER: Have you discussed this case with Captain Harries? -- A. No we only explained to him on that day about this affair.

HIS HONOUR: What day? -- A. I am not certain whether it was four days afterwards.

HIS HONOUR: And since that day you have not spoken a word about the case to Captain Harries? -- A. No he is a bad-tempered man and we have not spoken to him.

HIS HONOUR: Why has the place been changed where you clean the hides? -- A. We have shifted of our own accord because if anything else happened people might think that we ~~wondered~~ were not telling the truth.

HIS HONOUR: and is the cleaning now done at the house where Captain Harries lives -- A. Yes there is a cedar tree there.

HIS HONOUR: While the fight was going on do you think Mr. Hite could see you? -- A. No.

HIS HONOUR: Or either of the other two? -- A. No, he could not look because they were struggling.

HIS HONOUR: But if he had looked could he have seen you? -- A. No.

HIS HONOUR: What was preventing him? -- A. Because we were at the side of the building and bending over to look.

HIS HONOUR: All three of you? -- A. Yes.

HIS HONOUR: Could he not have seen your heads? -- A. No because he was very angry.

MR. LEAH: My Lord, might I ask you to put the Deposition of this witness in as well.

HIS HONOUR: Very well.

COURT ADJOURNED AT 1.10 P.M. UNTIL  
2.15 P.M.

NASIOKU B/O TABOGHU affirmed:

EXAMINED BY MR. HARRAGIN.

- Q.1060. Your name is Nasioku and you live on Captain Harries' estate? -- A. Yes.
- Q.1061. Do you remember the day Buana Jack died? -- A. Yes.
- Q.1062. Where were you on that morning? -- A. At the sekoni.
- Q.1063. Were you with anybody? -- A. Yes with the other two women.
- Q.1064. Do you mean the last two witnesses? -- A. Yes.
- Q.1065. Can you see well? -- A. I can see things near.

- Q. 1066. Can you hear well? -- A. Not properly.
- Q. 1067. Could you see well enough to see the Swana that day? -- A. Yes, I saw him because he came near me.
- Q. 1068. Where did you see him? -- A. At the time he came I saw him.
- Q. 1069. Where did you first see him? -- A. On the road near the piggery.
- Q. 1070. Did you see him again after that? -- A. I saw him come riding to the piggery and he dismounted.
- Q. 1071. After he dismounted do you know where he went to? -- A. Into the piggery.
- Q. 1072. Did you see him after that? -- A. Yes he came and entered the meat building.
- Q. 1073. Did you hear him speak to anybody about that time? -- A. He did not speak to anyone inside the building.
- Q. 1074. When he came out of the building did he speak to anybody? -- A. He came and spoke to the man who was holding the horse.
- Q. 1075. Do you know who that man was? -- A. The tall one of the accused.
- Q. 1076. After speaking to this man did you see anything happen? -- A. They spoke but I didn't understand what they said. Then the Swana struck the Kikuyu.
- Q. 1077. By the Kikuyu do you mean the tall one of the accused? -- A. Yes.
- Q. 1078. After the Swana slapped the Kikuyu what happened? -- A. The Kikuyu ran into the building.
- Q. 1079. Into which building? -- A. The building that I showed you.
- Q. 1080. The building you showed us yesterday? -- A. Yes.
- Q. 1081. Do you know what happens in that building in the

ordinary way? -- A. No.

- .1082. Do you know what the roof of that building is made of? Is it corrugated iron or grass? -- A. I don't know.
- Q.1083. When he ran into this building what did Buana Jack do?  
A. I saw him strike the Kikuyu.
- .1084. And then you say the Kikuyu ran into the building? --  
A. When he ran into the building he picked up a knife which he came and fought with.
- Q.1085. What did Buana Jack do? -- A. They both ran following one another.
- Q.1086. They both ran to this building? -- A. Yes.
- .1087. What happened after that? -- A. They went inside the building and came out again.
- Q.1088. What happened then? -- A. They fought outside.
- Q.1089. Could you see what happened in the fight? -- A. I saw but I ran away.
- .1090. Before you ran away tell us exactly what you saw. --  
A. There were three Kikuyus, two fighting and one separate.
- .1091. Who were they fighting with? -- A. Buana Jack.
- .1092. Did you see what happened to Buana Jack? -- A. I did not see it properly.
- .1093. Well tell us what little you did see. -- A. I saw them struggling but as I cannot see properly I didn't see well.
- .1094. Where were you standing or sitting at the time you saw this struggle? -- A. We stood up after the Buana slapped the Kikuyu.
- .1095. Where did you stand? -- A. On the grass where we pointed out to you yesterday.
- CROSS-EXAMINED BY MR. LEAH
- .1096. When the Buana and the Kikuyus were struggling could you see whether the knife was there then? --  
A. I could not see the knife.

- Q.1097. Well how could you see the knife at the butchery door? -- A. I didn't see the knife but I presume he picked up a knife there which he came and fought with.
- Q.1098. How do you know there was a knife at all? -- A. Because I know there is a knife there for cutting meat.
- Q.1099. How do you know a knife was used in the fight? -- A. I saw but not properly a person going like that.
- Q.1100. I put it to you you were told there was a knife? -- A. No, we are there every day and we know there is a knife in that building.
- Q.1101. Was it the building with the iron barrells that the accused ran into when he was struck? -- A. I don't know but the place where they fought is the place in the middle where I showed you yesterday.
- Q.1102. Are you certain that they went into any building at all? -- A. Yes I know they entered an a building and then came out.
- Q.1103. Well was that the building with the water tank outside the door? -- A. I did not look properly because after I saw the stabbing I trembled.
- Q.1104. After you saw the slapping you really didn't see anything at all -- A. After the slapping I did not look properly to any other happenings.
- CROSS-EXAMINED BY MR. SAVILLE
- Q.1105. Did you see Beana Jack fall? -- A. No, I was trembling.
- Q.1106. Do you remember giving evidence before the Magistrate? -- A. Yes, it is the same statement.
- Q.1107. Do you remember what you said? -- A. I made a similar statement.

Q.1108. Did you say to the Magistrate "I could not see much because of my eyesight being poor"? -- A. Yes.

Q.1109. "And within a minute of their coming out I saw the Bwana fall down and we ran off" -- A. I did not say that.

MR. SAVILLE: I would like that portion of the Deposition which I read out to go in My Lord.

HIS HONOUR: Very well.

Q.1110. Did you see any other natives or Europeans about there? -- A. No.

NO RE-EXAMINATION

HIS HONOUR: Have you discussed this case with anyone at all since the events you have described happened? -- A. No.

HIS HONOUR: Not with anyone? -- A. No.

HIS HONOUR: Not with either of the other two Wandorobe women? -- A. No.

HIS HONOUR: Am I to understand you have not discussed it with Captain Harries? -- A. No, no one goes near him.

HIS HONOUR: Have you not told your story to Captain Harries at any time? -- A. No and he has ferocious dogs which attack people.

HIS HONOUR: Did a Lwabwa send for you? -- A. When the Police were there a Lwabwa came.

HIS HONOUR: And you say you have never told your story to Captain Harries? -- A. Never.

HIS HONOUR: Do you remember telling the Magistrate in the Lower Court "I told my story to Captain Harries"? -- A. I don't remember.

HIS HONOUR: I put it to you once more, you are quite sure that you have not at any time told your story to Captain Harries? -- A. I don't remember because I can't speak to a European.

HIS HONOUR: I put it to you once more, have you ever at any time told your story to Captain Harries? —

A. No.

AGNES AIDMA sworn:

EXAMINED BY MR. HARRIS:

.1111. Do you live on the Estate of Captain Harries? —

A. Yes.

.1112. And were you living there at the beginning of May? —

A. Yes.

Q.1113. Do you remember the day that something happened to Swana Jack? — A. Yes.

Q.1114. Did you see Swana Jack that morning? — A. Yes.

Q.1115. Where did you first see him? — A. I saw him dismount at the piggery.

Q.1116. Where were you at that time? — A. I was at the back of my hut.

Q.1117. And where did he go to? — A. I saw him entering the piggery.

Q.1118. Did you see him again? — A. I also saw Wakahu going towards the piggery to take the horse.

Q.1119. Did you see them again later on? — A. Yes I saw him going to the other side.

Q.1120. And where did he eventually reach? — A. He went to the sokony.

Q.1121. Did you see him come out of the butchery? — A. I did not see him entering the butchery but I saw him outside calling Njeroge.

Q.1122. Did Njeroge come to him? — A. Yes he went close to him.

Q.1123. Did any other Kikuyu go to him? — A. I saw Wakahu and the other accused.

Q.1124. You told us Wakahu had gone to hold the horse? —  
A. He was holding the horse in the open.

- Q.1135. What part of the open? -- A. Outside the butchery.
- Q.1136. Did you see Buana Jack talking to Wakahu? -- A. Yes.
- Q.1137. Did you hear what he said to him? -- A. Yes.
- Q.1138. What was he talking about? -- A. He was asking him "where were you yesterday".
- Q.1139. When he asked him that where were you? -- A. I was this side of my hut.
- Q.1140. How far away from your hut? -- A. It was this side of the stream.
- Q.1141. Will you point out how far you were from your hut? --  
A. As far as from here to the middle of the Court (25 feet).
- Q.1142. In what tone of voice was Buana Jack speaking? --  
A. He asked him loudly.
- Q.1143. Did he seem pleased? -- A. He was not very pleased.
- Q.1144. Were there any other women about at that time? --  
A. No.
- Q.1145. Did you see any Wandorobe woman? -- A. Yes.
- Q.1146. Where were they? -- A. In the open at the sekoni.
- Q.1147. How far away from where Buana Jack was talking to Wakahu? -- A. About 12 feet.
- Q.1148. Did you see Buana Jack do anything? -- A. He struck Wakahu.
- Q.1149. How did he strike him? -- A. With his hand on the side of the face.
- Q.1140. With his open hand or closed hand? -- A. His open hand.
- Q.1141. After Buana Jack struck Wakahu what did Wakahu do?  
A. I saw him let go of the horse and jump at the Buana.
- Q.1142. When he jumped at the Buana what happened? --  
A. They went and the building started to fall.
- Q.1143. Did you see any other native boys about there when this struggle was happening? -- A. I only saw the Wandorobe women by themselves.



- .1144. No native boys? -- A. I didn't see any other male.
- Q.1145. Do you know the second accused? -- A. He had recently been taken on.
- Q.1146. Do you know where he was that morning? -- A. He was there that day.
- Q.1147. Did you see him? -- A. Yes.
- Q.1148. Why did you tell me a moment ago that you saw no other? -- A. Yes I saw them catching hold of the Swana in the open.
- Q.1149. The last thing you told me was that the Swana was struggling with Wakahu and they went behind a building and you could see no more? -- A. Yes.
- Q.1150. Did you see No.2 accused anywhere near that place? A. Yes I saw him come out from the kitchen with a piece of wood and try to strike the Swana and Njeroge took it away from him.
- Q.1151. At the time that you saw him come out with this piece of wood could you see Swana Jack and Wakahu? -- A. Yes and Njeroge.
- Q.1152. You could see all of them? -- A. Yes.
- Q.1153. How were you able to see them? Had you moved to a better place or had they come out from behind the building? -- A. When they were struggling No.2 came out immediately with this piece of wood.
- Q.1154. Was this before they were concealed by the house? -- A. Yes.
- Q.1155. What did you next see? -- A. At that time I sat down in my hut.
- Q.1156. Did you ever see any of the party again? -- A. I saw Njeroge making a sign with his finger at the others. Then I saw these two running away towards the house.
- Q.1157. And did you see where Njeroge went? -- A. When he

pointed at them and they ran away Njeroge ran towards the Buana's house.

CROSS-EXAMINED BY MR. LEAH

Q.1158. Are you quite certain that you heard the Buana speaking to Wakahu when he was holding the horse?  
A. Yes.

Q.1159. And you know that he asked Wakahu where he had been the day before? -- A. Yes.

Q.1160. In the Court below you said "He then spoke to Wakahu but I couldn't hear what he said"? -- A. It was Njeroge's words that I did not hear when he was making that sign with his finger.

Q.1161. I put it to you again, did you tell the Court that you didn't hear what the Buana said to Wakahu? --  
A. Yes I said that.

Q.1162. Why do you change your mind now -- A. I have not changed.

Q.1163. Why do you tell a different story now? -- A. I have not told a different story.

Q.1164. In the lower Court you said you could not hear what the Buana said. Now you give us the very words the Buana said. -- A. He did ask Wakahu where were you yesterday.

MR. LEAH: My Lord I would ask for that part of the deposition to be put in.

HIS HONOUR: Very well.

Q.1165. You have just told us you saw Buana Jack strike Wakahu on the face. Was that a hard blow? --

A. I didn't hear the thud but I saw the blow.

Q.1166. Did you see whether Wakahu staggered after he was hit? -- A. I did not see him stagger.

Q.1167. Did you see him run to either the butchery or the kitchen? -- A. No.

Q.1168. Did you see whether he ran at all? -- A. No.

- .1169. Did you call out for help? -- A. At that time I didn't see them killing the Swans.
- .1170. In fact you saw very very little of what happened? -- A. Yes.
- .1171. Have you talked about this matter to anybody? -- A. No.
- .1172. Or to any other women? -- . No.
- .1173. What about Swana Harries? -- . Swana Harries called me on a Tuesday.
- .1174. Did you shout to Jerome when he was running away? -- A. No I did not know what had been done.
- .1175. You didn't shout to him and ask him what had been done? -- A. I was far away from him. I saw him crossing to the bridge.
- .1176. And you say you told Swana Harries? -- A. First of all I told it to Kibe and Kibe reported to Swana Harries.

CROSS-EXAMINED BY MR. SAVILLE

- .1177. You say Akahu was holding the horse? -- A. Yes.
- .1178. Was he holding it with his right hand or his left hand? -- A. His left hand.
- .1179. You could see that could you? -- A. Yes.
- .1180. What had he in his right hand? -- A. I did not see. I only saw him holding the horse.
- .1181. Which direction was the horse facing? -- A. Towards the butchery.
- .1182. Was Akahu facing the horse or at the side of the horse? -- A. He was facing the same way as the horse.
- .1183. When Swana Jack hit the accused was he facing him? -- A. Yes.
- .1184. And did he hit the right or left side of his face? -- A. The left side.
- .1185. With the right hand? -- A. Yes.

- Q.1183. Did the horse rear or do anything like that? --  
A. Sakabu let go of the horse and struggled with the Bwana and the horse ran off.
- Q.1187. Did you see a knife at that time? -- A. No.
- Q.1188. And it was the very same time that No. 1 accused grappled with the Bwana that No. 2 accused came out with the kuni? -- A. Yes.
- Q.1189. Did he come out of the kitchen door? -- A. Yes.
- Q.1190. Did you see that? -- A. Yes.
- Q.1191. And did Njeroge come out of the kitchen door? --  
A. No he was there in the open.
- Q.1192. And where exactly was Njeroge standing, behind or in front? -- A. He was to the right of the Bwana.
- Q.1193. And close to him? -- A. Yes.
- Q.1194. How close? -- A. Practically touching.

NO RE-EXAMINATION

NYAMOSI MUBONYA affirmed. (Interpreter Daniel Ochiwaya)

EXAMINED BY MR. PHILLIPS.

- Q.1195. Are you a Tariki? -- A. Yes.
- Q.1196. Do you live on Captain Harries' fara? -- A. Yes.
- Q.1197. Is your house near the butchery? -- A. Yes but not very near.
- Q.1198. Did you point your hut out to a European Police Officer one day? -- A. Yes.
- Q.1199. Is this the Police Officer (Mr. Dalfreman)? -- A. Yes.
- Q.1200. Where were you on the morning when Bwana Jack was killed? -- A. I was in my hut.
- Q.1201. Did you hear anything? -- A. I heard a noise of people running but I did not see the killing of the Bwana.
- Q.1202. When you heard that noise were you inside your hut or outside? -- A. Inside.

- Q. 1203. And what did you do? -- A. I thought it was the noise of horses.
- Q. 1204. So what did you do? -- A. I went outside.
- Q. 1205. And what did you see? -- A. I only saw two Kikuyus running away.
- Q. 1206. Did you recognise those Kikuyus? -- A. I knew one but the other I only knew by sight.
- Q. 1207. Who was the one you knew? -- A. Wakahu.
- Q. 1208. Can you see him here in Court? -- A. Yes.
- Q. 1209. Where is he? -- A. The one with the brown blanket.
- Q. 1210. And can you see the other one whose name you did not know? -- A. Yes.
- Q. 1211. Where is he? -- A. The short one.
- Q. 1212. In which direction were they running? -- A. They were going through the fence towards Bwana Samaki's farm.
- Q. 1213. And from which direction were they coming? -- A. From the sokoni side.
- Q. 1214. And about what time of the day was this? -- A. Eight o'clock in the morning.

NO CROSS-EXAMINATION BY MR. LEAN  
CROSS-EXAMINED BY MR. SAVILLE

- Q. 1215. Did you hear any shouting before the running? -- A. No only the noise of running.

NO RE-EXAMINATION

TEYA TLET affirmed:

EXAMINED BY MR. PHILLIPS.

- Q. 1216. What tribe are you? -- A. Ndorobo.
- Q. 1217. Do you work for Captain Harries? -- A. Yes.
- Q. 1218. And on the morning when Bwana Jack was killed were you at Captain Harries' house? -- A. Yes.
- Q. 1219. And did you see Njeroge come and report to Captain Harries? -- A. Yes.

- Q.1220. And thereafter did you see Captain Harries go off in the car with Kibe? -- A. Yes.
- Q.1221. And then what did you do? -- A. I also followed.
- Q.1222. And did you go to the butchery? -- A. Yes.
- Q.1223. And did you find Swana Jack there dead? -- A. Yes.
- Q.1224. Was Captain Harries already there -- A. Yes.
- Q.1225. And then did Captain Harries give you some instructions? -- A. He told me to go and arrest the man who had absconded.
- Q.1226. What man was that? -- A. Mjeroge.
- Q.1227. And did you go and try to catch him? -- Yes but I was not able.
- Q.1228. At that time did you see any women there? -- A. No.
- Q.1229. Did you at any time that morning after finding Swana Jack dead see any women? -- A. No.
- Q.1230. Do you know these three handkerchief women outside? -- A. Yes.
- Q.1231. Do you know of your own knowledge where they were that morning? -- A. I saw them in the morning. They left our home to go to the sokoni.
- Q.1232. Do they live near you? -- A. Yes.
- Q.1233. How far away is that from the sokoni? -- A. As far as from here to the end of the native village (about 1 mile).
- Q.1234. And in which direction were they going? -- A. To the sokoni.
- Q.1235. What time was that? -- A. 6 o'clock.
- Q.1236. Do you know whether they are in the habit of going to the sokoni? -- A. Yes.
- Q.1237. When do they usually go? -- A. Every morning at 6 o'clock.
- Q.1238. And you say you saw them on the morning Swana Jack was killed going off as usual in the direction of the sokoni? -- A. Yes.

Q.1239. Did you see any of them again that morning? --

A. Yes.

Q.1240. How many of them did you see again? -- A. Three.

Q.1241. Where and when did you see them? -- A. At that time, six o'clock.

Q.1242. When did you next see them? -- A. I did not see them again.

CROSS-EXAMINED BY MR. LEAH

Q.1243. Are you sent by Captain Harries to fetch any of these women to him later on? -- A. Yes.

Q.1244. Had you talked over with Captain Harries about the killing? -- A. Nothing more except when he told me to go and call the women.

Q.1245. Did you talk to the various women about this killing at any time? -- A. No except on that day when I went to call them.

Q.1246. Did everybody on the shamba know all about this killing? -- A. All the shamba people know.

Q.1247. Were they all talking about it amongst themselves? -- A. I did not hear them talking.

Q.1248. Do you mean to tell me that it was not a matter that everybody on the farm was talking about? -- A. They do talk but I haven't heard.

NO CROSS-EXAMINATION BY MR. SAVILLE

NO RE-EXAMINATION

HIS HONOUR MR. JUSTICE TRACKER: You didn't see an Ndorobo woman running that morning? -- A. I saw one woman Nasioka running out from near the piggery.

HIS HONOUR: What time was that? -- A. 8 o'clock.

HIS HONOUR: Which direction was she running? -- A. Towards the Wandorobos homes.

HIS HONOUR: Why didn't you say this just now? -- A. I thought you meant morning time.

HIS HONOUR: Is 8 o'clock not in the morning time? -- A. Yes.

KICHOLI WA KUKIA affirmed:

EXAMINED BY MR. PHILLIPS:

- Q.1249. Do you live on a farm at Marashoni? -- A. I am of  
Bwana Ross.
- Q.1250. And do you live there? -- A. That is my home.
- Q.1251. Do you know Captain Harries' farm? -- A. I don't  
know him.
- Q.1252. Do you know this second accused? -- A. Yes.
- Q.1253. Is he related to you in any way? -- A. He is my  
son-in-law.
- Q.1254. Do you know the farm where he was working? -- A. No  
he is far away.
- Q.1255. Do you remember him coming to your hut at Marashoni  
one day some months ago? -- A. Do you mean after  
the deed which they committed?
- Q.1256. Yes. -- A. I had gone on a journey to a place  
called Chom. On my arrival I sat down and I  
saw them appearing about 1 o'clock in the day.
- Q.1257. And how long did they stay at your place? --  
A. They slept there. I invited them to go out  
with me for a walk but they said they were  
tired.
- Q.1258. So you say they spent the night there? -- A. Yes.
- Q.1259. And what did they do in the morning? Did they go  
away? -- A. returned from where I had gone  
at 12 midnight and they were already in bed.
- Q.1260. And did you see them again next morning? -- A. Next  
morning I went to the hut they were in. I asked  
them why they had come here. They replied just  
for a walk.
- Q.1261. Did you have any further conversation with them? --  
A. I told them there was a goat to be  
sacrificed for a sick woman, a widow, and I was  
going there so I said Goodbye.



Q.1862. Did you see them again? -- A. No, I see them now.

NO CROSS-EXAMINATION

HIS HONOUR MR. JUSTICE THACKER: Has No.2 accused ever been to see you before? -- A. Yes he comes there on account of his wife who is at my place.

HIS HONOUR: Did you see any bloodstains on either of them when you saw them? -- A. I can't tell because they told me nothing and I did not remain with them long.

HIS HONOUR: Did they go out of the house at all while you were there? -- A. No.

HIS HONOUR: Did they seem quite easy in their minds or were they agitated? -- A. He was like other days when he comes.

HIS HONOUR: Was his wife there then? -- A. Yes because I took her away from him.

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MR. HARRAGIN: Subject, My Lord, to putting in the statements of the two accused that is the case for the Crown.

Statements of accused read and put in.

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COURT ADJOURNED AT 4.05 P.M. UNTIL

9.30 A.M. TOMORROW

THURSDAY 26th July 1956

COURT RESUMED 9.30 A.M.

Witness NICHOLI recalled (still on oath).

HIS HONOUR: Had you ever seen No.1 accused at your hut before the day he arrived with No.2 accused? -- A. No never.

R. SAVILLA: My Lord, at this stage I propose to submit that there is no case for No. 2 Accused to meet. I would refer Your Lordship to the Criminal Procedure Code Section 289(1) which reads:-

"When the evidence of the witnesses for the prosecution has been concluded, and the statement or evidence on oath (if any) of the accused person before the committing court has been given in evidence, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence shall, after hearing, if necessary, any arguments which the advocate for the prosecution or the defence may desire to submit, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict of not guilty"

and I submit, My Lord, that there is no evidence put before you on behalf of the prosecution that No.2 accused has committed any offence. It is not, I take it, part of the Prosecution case that accused No.2 actually with his own hand committed murder but what I presume they are relying upon is aiding and abetting or otherwise assisting No.1 accused to commit murder and I would refer Your Lordship to Section 21 of the Penal Code and particularly to sub-sections (b) and (c):

"21. When an offence is committed, each of the following persons is deemed to have taken part in

committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say:

- (a) every person who actually does the act or makes the omission which constitutes the offence;
- (b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;

If the Prosecution rely upon that paragraph by Lord I submit that there is no proof whatsoever of any purpose, any intention, any motive. There is no proof whatsoever that the second accused had any purpose when he took part in the proceedings which terminated in what may be murder or manslaughter by accused No.1.

- (c) every person who aids or abets another person in committing the offence. "

Now I submit these are the only two propositions of law under which the accused could possibly be charged with the crime of murder. I submit that if the Prosecution propose to contend that No.2 accused comes under the provisions of paragraph (c) of Section 21 then they must be prepared to argue that if A sees B and C fighting and with every intention of preventing further fighting and preventing any further mischief being done he intervenes in that fight, and we will assume he would naturally make his first effort to part the person who is winning, and while so intervening one or other of those persons gets killed, then he has committed the crime of murder. I submit that that is not Law nor is it Justice. In order to aid or abet I submit that you must know that a murder is contemplated or is likely to happen and you must go in there to aid the murder and if you do not go in there to aid the murder but with the intention of preventing the combatants from

carrying on the fight, and if by your intervention a murder is actually caused I submit that you have committed no offence; you have been doing only the normal duties of a citizen and death, as far as you are concerned, is an accident. I propose to submit that there is no evidence to show that the accused No. 2 did more than that. I am arguing entirely on the evidence and I submit that there is no evidence whatsoever that the accused No. 2 did anything but that. Before the Crown can ask Your Lordship to put the accused No. 2 on his defence there must be some evidence, however slight, that his intention was to aid No. 1 in the commission of an offence, whether it be murder, grievous bodily harm, assault or anything else.

HIS HONOUR: Is it your suggestion that he was in fact helping Mr. Jack White?

MR. SAVILLE: My Lord, I am not suggesting any intention. I am arguing that no intention has been proved and will go further and say that there was no intention whatsoever.

HIS HONOUR. The intention must be judged by the act.

MR. SAVILLE: That is exactly it My Lord, and if Your Lordship can draw two conclusions from this act, the reasonable conclusion that he was parting or attempting to part the two combatants and the other conclusion that he was aiding and assisting No. 1 accused in the commission of an offence then the presumption of innocence must stand.

HIS HONOUR: Surely the man he should have attempted to stop was the man with the knife

MR. SAVILLE: That, My Lord, is one of the biggest points that I will argue before you later. First of all we will examine what type of evidence would make it possible for Your Lordship to hold that he was aiding and assisting. One of the things which may be proved is as to motive. There is no motive which has been proved in this case and there is no evidence of any motive.

HIS HONOUR: That of course is unnecessary.

MR. SAVILLE: It is unnecessary, but motive becomes necessary in a case of this sort where intention cannot be presumed or concluded from the other evidence surrounding the case and then motive becomes material. If there was a motive for Accused No. 2 to get the deceased out of the way then that would be very material in judging his behaviour. The other fact which might be proved would be intention. Is there anything on the record before Your Lordship which would lead Your Lordship to a conclusion more favourable to the accused's guilt than to his innocence? I submit there is not. Assuming all this evidence is true what has been proved is that after a blow in the face delivered by the deceased to Accused No. 1 within a short period there was a struggle between the two; that Crown witnesses at some time during that struggle noticed a cut on the deceased's wrist; that within a very few moments after that they saw a knife and practically at the same instant as they saw the knife the fatal blow was delivered. I think I am right in saying, My Lord, that there is no evidence that any of the Crown witnesses saw a knife prior to the actual blow being delivered; the evidence was that they saw the flash of a knife and the stab. I don't say we admit the evidence to be absolutely correct. I am only admitting it to be correct for the purpose of this argument. Is there any reason to assume that accused No. 2 saw the knife prior to that instant? I submit Your Lordship cannot make such assumptions in view of the presumption of innocence of the accused.

HIS HONOUR: You are asking me to assume that No. 2 accused did not see the knife at all until it was plunged into Mr. White's chest?

MR. SAVILLE: If he saw it then, and I am not asking Your

Lordship to presume that. I say there is no evidence. The Crown did not produce one tittle of evidence to the effect that accused No. 2 saw the knife prior to that fatal blow. If there is any assumption to be drawn it is rather the assumption that he did not because the evidence is that he was in the kitchen at the time and the evidence is that they may or may not have been fighting in the kitchen and in the darkness of the kitchen it is hardly likely that it would be any easier to see the knife than it would be for the Prosecution witnesses standing outside to see it. I submit that there is no evidence whatsoever upon which Your Lordship can draw the conclusion that accused No. 2 saw that knife before the fatal blow was struck.

There is evidence My Lord that at the time accused No. 2 grappled with the deceased the deceased was getting the better of the fight. I think the witness Bellani said that Evans Jack was overpowering the deceased when the second accused came and gripped him round the hips and then lowered his grip and the fatal blow was struck so that there is no reason to draw any other conclusion.

HIS HONOUR: Mr. White was bleeding from the wrist prior to that so that if No. 2 accused did not see the knife surely he could be expected to have seen the blood and that would lead him, I would have imagined, to suppose that a knife or some instrument was being used by someone.

MR. SAVILE: I submit My Lord that there is no evidence to show that he did see the knife.

HIS HONOUR: What evidence can the Prosecution bring that he did see the blood? It must be presumed he did.

MR. SAVILE: I submit My Lord that it is not a fair presumption to make because while the Prosecution witnesses were outside No. 2 accused was inside the kitchen. He came out and apparently made his attack the moment he

came out. It does not necessarily follow that the accused No.2 could see the same thing as the prosecution witnesses. They were in a different relative position to the deceased.

HIS HONOUR: They were further away.

MR. SAVILLE: Yes but they were in the daylight whereas No.2 accused was surrounded by four walls inside the kitchen and there can be no presumption that he saw the blood at that time. So that while I do submit that Your Lordship can draw no conclusion on the grounds that he attacked the one or the other, there is no evidence upon which the presumption can be drawn that accused No.2 saw the blood or knew how it had come there.

I can find no other evidence whatsoever given about the fight that could force Your Lordship to any reasonable conclusion that the accused No.2 was deliberately aiding or abetting or assisting in any way with the knowledge that he was assisting accused No.1 to commit murder, grievous bodily harm or any other assault on the deceased.

HIS HONOUR: Why did he run away?

MR. SAVILLE: My Lord, that is another point that I will come to. There is the question of the mythical stick which is apparently an object of length but neither breadth or thickness. It was thrown away by Njeroge and until this day it has never been seen. But even if the stick was there and Accused No.2 proposed to use it can Your Lordship draw any inference from that except that he was trying to prevent the fight? One way of preventing a fight is by hitting the persons with a stick - to arm yourself with the nearest stick and go up and beat them both. The fact that you might chance to hit the one before the other is a matter of complete indifference; you would probably start on the one winning the fight. So Your Lordship can draw no conclusions from the stick.

Therefore if Your Lordship can draw two equally sound conclusions, one that the accused is guilty and the other that he is not guilty, the presumption of innocence immediately comes into play and Your Lordship must give the accused the benefit of the doubt.

Then the question arises has anything been proved to Your Lordship on the record to rebut the presumption of innocence and I submit not. It might be said that the accused No. 2 ran away but that is far from sufficient to rebut the presumption in this case.

HIS HONOUR: Per se possibly not but that is not the only fact.

MR. SAVILLE: As regards the running away Your Lordship has heard evidence of the terror in which Captain Harries is held.

HIS HONOUR: Do you suggest that at no time did accused No. 2 realise that No. 1 had stabbed Jack White?

MR. SAVILLE: No I don't suggest that. On the evidence he knew.

HIS HONOUR: And yet he was content to run away with the man who killed Jack White?

MR. SAVILLE: I submit that what he was running away from was not the law or Justice but from Captain Harries. I submit that there is no conclusion to be drawn from the fact that they ran away together.

HIS HONOUR: It is highly dangerous to run away with a man who has killed somebody.

MR. SAVILLE: Yes my Lord, but we are not dealing with Europeans, we are dealing with Kikuyus. You have the evidence of his father-in-law that he was not in the least agitated when he arrived at the house. You have no evidence that he attempted to evade arrest.

HIS HONOUR: We have also got the fact that he has not put forward so far the story that you are now putting forward.



MR. SAVILLE: My Lord I am not putting this story forward as his story. If accused No.2 ever has to go into the box his story will be totally different. My argument now is on the assumption that the Crown evidence is true but by no means would I like to convey the impression to Your Lordship that I believe one word of the Crown evidence. I must assume the Crown evidence to be true for the purposes of this argument and no conclusion can be drawn from the fact that the accused in the Court below made no statement. It is the advice which I understand is invariably given to any person on a preliminary charge by nearly every constable "Keep your mouth shut; it is the wisest thing you can do".

Now My Lord, the presumption of innocence is not to be lightly rebutted. The Crown must bring some evidence, however little, of either motive or intention or the desire of the accused in order to bring him within the definition of aiding, abetting or assisting.

The furthest I can go is to say that Your Lordship can draw two reasonable conclusions but I do submit that Your Lordship need only draw one conclusion from the evidence assuming the legal presumption of innocence and that is that every act proved against the accused No.2 is capable of a conclusion that he was acting innocently. His flight loses all its force as evidence against him when you consider how Captain Barries is thought of on that farr.

HIS HONOUR: It would have been just as easy for him to have gone to the nearest Police Station and said he tried to stop the stabbing.

MR. SAVILLE: It would have My Lord but when drawing conclusions such as this I do submit you must consider the type of man accused is. I would ask Your Lordship to acquit him, but I would like to repeat, My Lord, that

under no circumstances do I agree that the Crown case is the truthful one.

MR. HARRAGIN: May it please Your Lordship, before I reply to my learned friend I would like to know the position with regard to accused No. 1. Am I going to have to reply in due course to a similar submission with regard to No. 1?

MR. LEAN: No, My Lord.

MR. HARRAGIN: With regard to this submission I have little to say on the law which my learned friend has quoted to Your Lordship except to express surprise at his optimism in having taken the trouble to point out the correct section and the correct law and then endeavour to so, from my point of view, alter the facts of the case as to try and pretend that they come within this particular section, because he started off by referring to Section 889 Criminal Procedure Code, which reads "the court, if it considers that there is no evidence ....." It doesn't say "if there is not sufficient evidence" or "if you think the evidence is lying" or anything of that description but "if it considers that there is no evidence", and really must congratulate my learned friend on his optimism in suggesting that there is no evidence that No. 2 accused had anything to do with the killing of Jack White. Now he has also presented me quite gratuitously with this argument that I may assume in favour of the Crown every bit of evidence that has been given. Can anyone who has been sitting in this Court suggest for one moment that if the Court believes the evidence of the first two Sandorobo women there is not sufficient evidence to call on No. 2 accused.

A great deal has been said with regard to intention and motive. I have nothing to say except this, that as a result of the intervention of No. 2 accused in the fight

on the evidence before the Court at the moment Jack White is dead and that if No. 2 accused had remained in the kitchen or had not been there at all Jack White in all probability would be alive to-day. My learned friend dismisses quite lightly the fact that he came out with a piece of firewood in his hand and not only in his hand but the witness showed Your Lordship in the box how he intended to strike Jack White. I submit that his coming out with the firewood in a manner which indicated to the Crown witnesses that he was going to strike Mr. White can only mean one thing and that is that he intended to do at least grievous bodily harm himself to Jack White and that when Hjerorge intervened and prevented the commission of this crime he then joined in the fight, but with whatever intention he did join in the fight the result of his joining in was that his friend whom he was protecting and with whom he afterwards ran away was able to stab Jack White. I think I am asking very little of Your Lordship to say that he joined with that intention.

My learned friend asks how the Crown has proved that he knew No. 1 accused had a knife. There are certain things that a Court and Jury are asked to presume and one is that a man if he has two eyes in his head can see. We have produced witnesses with even worse eyes than the accused who were able to see this knife and it is a presumption that I think I am entitled to ask any Court to make that where three or four people standing at a greater distance see see a man with a knife in his hand the second accused who was standing far closer and was far more interested in the fight would be able to see that knife also and must have known when he gripped Mr. White first round the waist and then lower down that he was then enabling his friend No. 1 to administer the fatal blow which he in fact did. I submit that his

conduct afterwards was exactly what you would expect of a guilty person and Your Lordship must remember that Njeroge who also was one of them did not run away from this terrible man who is being held up to Your Lordship to account for everything. He went straight to Captain Harries and I submit that the most simple thing for No. 2 accused to have done and the thing one would have expected him to do was to go with Njeroge, but he doesn't do that; he dashes away 15 miles across country. It is interesting to note that so far we have no evidence that he even mentioned to his father-in-law this incident which he had taken part in a few hours before and I suggest that if there is any conclusion to be drawn it is that he intended if possible to hide the fact from the world in general. Why? Because he was innocent? I suggest not.

I don't think there is anything further that I can urge except to say again that even if there had been no eye-witnesses at all and we were just relying on the circumstantial evidence the case would have been sufficiently strong for Your Lordship to have called on No. 2 accused to answer for his part in the proceedings that day.

With regard to the last point of course my learned friend quite rightly quotes Section 21 but as in my opening I indicated that I was relying particularly on section 22 with regard to common intent I don't think any further argument is necessary on that point.

MR. SAVILLE: Regarding section 22 my Lord I submit that that is essentially a matter for proof. I now presume that the learned Attorney General is relying upon Section 22 of the Penal Code.

MR. HARRAGEN: In conjunction with 21 but 22 is the final section which rounds the thing off.

MR. SAVILLE: Under Section 88 my learned friend must prove that there was a pre-conceived plan to commit the offence. He has not done so. He puts before Your Lordship certain facts and he asks Your Lordship to draw only one conclusion and that is that the accused is guilty. I submit that there are two conclusions to be drawn both equally valid, equally reasonable conclusions.

HIS HONOUR: The Attorney General hardly goes as far as that. All that is necessary is for him to show the Court that there is some evidence.

MR. SAVILLE: Yes that there is some evidence. I say that all the evidence he has produced shows not that the accused is guilty but that he is innocent. The evidence is equally capable of a conclusion that the accused is innocent and if so this Court will not put him upon his defence. That My Lord is my submission.

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R U L I N G:

HIS HONOUR: It is submitted by virtue of Section 289(1) of the Criminal Procedure Code by Mr. Saville on behalf of accused No. 2 that there is no evidence that accused No. 2 committed the offence charged against him and further that all No. 2's acts in the event as proved so far in this Court are as capable of being reconciled with his innocence as with his guilt.

I am unable to agree with this submission or to hold that there is no evidence before this Court that the accused No. 2 did commit the offence charged against him.

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HIS HONOUR (To Accused No. 1): The Crown have now closed their case against you. There are three courses which you may adopt now. You may go into the witness box if you so wish and give evidence on oath and in that case you are liable to be cross-examined by the Crown. The second course which you are equally at liberty to adopt if you so wish is to make a statement not under oath from the dock in which you now stand and in that case you cannot be cross-examined by the Crown. The third course which you are equally at liberty to adopt if you so wish is to remain silent neither giving evidence on oath nor making any statement from the dock.

(Accused No. 1 elects to make a statement from the dock).

WAKAHU WA KIHINYA (Not on oath):

On Sunday deceased came in and found me working, 12 o'clock midday. He came with the ham. He asked me where Njeroge was. I replied I did not know where he had gone to because Njeroge hadn't told me where he had gone. He left the ham with me. He asked me whether I was able to cook the ham. I replied that I had never tried. He told me when Njeroge came to ask him to boil it because it is required for to-morrow morning. He went away. At that time I had finished my work and then I closed the butchery. On Sundays we close the butchery at 12 o'clock. I went for a walk towards the gate. I returned at 3 o'clock. On my return I opened the butchery. I then lit fire. I went and got some pork and started to make mince meat. Before I had finished mincing, Njeroge returned at 4 o'clock. He came on a horse. He handed the horse to a Turiki boy who was there. He asked me whether Njeroge had returned. I told him not yet. He again ordered that when he comes the ham must be boiled and the ham must not be left. He

asked me whether I could slaughter a Turkey. I replied Yes I could. He went inside the butchery. He sat down on a chair. He started perusing the butchery book in which we record the stuff which comes to the Nakuru butchery. He again went out and went to the shamba. He did not remain long in the garden and returned again. He rode on his horse and went away. He asked me to follow him later and to get the turkey and to slaughter it. At that time it was about 5.30 p.m. I followed him. There are two roads. Swana Jack took the lower road and I took the upper road. As I was running I arrived before him. He went and stood in the milking shed. I remained in the homestead for a long time before he arrived. I went down to look for him. I asked him whether he was going to give me the turkey because it was getting late. He asked me to go along with him and he was going to enquire from the Mansahib. I went into the kitchen. He handed the horse to someone outside. Then he ordered me to follow him. He went to the turkey run but it was very dark inside. He asked me to run back to kitchen, light <sup>a lamp</sup> and bring it. I got the lamp lighted and came running back. We looked for a hen but we couldn't find a fat one. We went to another boma or shed. Before we got to the other shed we found Mr. Harries and his wife. They spoke but I didn't understand what they said. We went inside turkey shed. We found the Furiki boy in charge of the turkeys. Swana went inside - he asked us to stand in the doorway to prevent turkeys coming out. He caught one turkey inside. He came out with it outside and asked me to hold the turkey for him as he was going to slaughter the turkey. After I slaughtered the turkey I told him there was no lamp at my place, how was I going to dress it. He asked me where our lamp was. I told him it had no wick. He asked me to take the kitchen lamp and to bring it back.

in the morning. He told me if I found Njeroge had returned to boil the ham. I left Swana's place about 7 p.m. I returned back to the butchery. I dressed the turkey and prepared the sausages. I swept the butchery and locked it. I went back to my place and slept. I woke up about 5 o'clock in the morning. I opened the butchery. I placed things on a plate which were to come to Nakuru. The Swana who was in charge of Nakuru butchery came at 6 o'clock. I handed the things to him and he went away. I remained at the kitchen until it got light. Njeroge and Koine then arrived. They took the crate and went towards Mr. Harries' place to get the fowls. I was left behind boiling water for the pigs as there had been a dead pig and we had been told to dress it. After a short time I got a cup to go down to drink water at the stream. When I was going down to the stream I saw a Lumbwa calling me. I did not drink water then but ran across and met the Lumbwa at the bridge. He told me to hold the horse. I returned with the horse to where the pigs are fed. I remained there. The dog then started to play with me which Swana had come with. After short time I saw Njeroge and Koine coming. They had 6 fowls in a wheelbarrow. They passed me and they went along. They went to the butchery. After the pigs were fed Swana came out of the piggery and went towards the butchery. I followed him still holding the horse. Upon Swana's arrival he went right into the kitchen and I stood outside. He found Njeroge there. Koine was at the place where the chickens are plucked. Swana asked Njeroge whether the ham has been cooked. He replied "No because I returned at 7 p.m. last night". He asked him the reason why he had gone away. He replied "There was not much work and I did not know a ham was going to be boiled". Swana started talking. He grabbed much in the kitchen and I saw him pick up a knife from the kitchen. He was going to cut some meat in the



butchery for his dog. He came to where I was. He asked me "Did you give instructions for the ham to be boiled" I replied "Yes I did". He replied "You did not". I told him that I had told Njeroge but Njeroge replied to me that there was no fuel. Swana then struck me. I told him not to beat me for nothing because I had not done anything wrong. I told him you found me working and yesterday you also found me still working. If you think I have done wrong you had better let me go. He abused me again. I told him I am going to report you to Mr. Harries for striking me for no reason. Then I said that he made a stab at me with a knife which he was holding. When I noticed he was going to stab me I went to ward off with my left hand. My coat sleeve was pierced and it went through and cut me on the wrist (left). I was standing like this holding the horse (witness demonstrates). When Swana made to stab me I caught his wrist like this. Then the horse started to pull me away on account of the trouble. He said if you let go the horse it is bad". So he pulled his hand forcibly towards himself and by the force I hit Swana on the chest with my head and then the Swana with his own hand stabbed himself. That is when he forcibly pulled his hand away. By that time the horse had belted; when I noticed he had stabbed himself I ran away as far as to the door (20 feet). I heard him saying "Who is going to call Swana Harries". When I heard Mr. Harries' name mentioned I said this is going to be bad on my part, knowing his temper. I thought if I went-oh wait there he will come and assault me and tie my leg with a rope like he had done to another man a few days before. Then I went away past my quarters. I went and passed through to near the gate. I passed the pyrethrum shamba. Before I reached Swana Samaki's store

Keine overlooked me. We went to Swana Grant's place. We remained there till about 10 o'clock. We found there a letter awaiting Keine from his wife telling him his son was sick, inviting him to go and see the child. He asked me to take him there so we went. We arrived at Nicholi's place at 2 o'clock day time. We found no one there. He asked me to wait and see whether people will come home and see how his wife was. Nicholi then arrived. We greeted us. We replied to the greetings. He said there was no one at home, and we had better go for a walk. We told him we were tired and wanted to lie down outside there. We lay down on the grass. We woke up about 5 p.m. People had come home at this time. We greeted one another and went to Nicholi's mens hut. Fire was made for us and then we warmed ourselves. Nicholi then later came. He enquired whether we were still inside and we replied "Yes". He went away and we don't know where to. We left the hut and went to Keine's wife's hut. Keine started talking with his wife. He said didn't you tell me child was sick and made me come all this way. She said I want to find out if you still require me because my father wants to marry me to someone else. We remained there, fed, and went to bed. We returned to Nicholi's mens hut and slept there. We did not know when Nicholi returned home. We only saw him again in the morning. Again on the morning we went to Keine's wife's hut, washed ourselves and had food. We remained outside there. We left that place about 9 o'clock saying that we were going home. Before we reached Swana Beeston's place we met the police. They were with Njogu. I recognised one of the police, Malingi, whom I knew before. I told Keine "those are the police" "I don't know where they are going to". Njogu was in front and he stood with us. Then the police came up. I saw Mbathe catching hold of accused No. 2 and Malingi

caught me but said "Don't run away". Then we were brought. When they arrested us I was holding a knife. I had found the knife the day before between Buana Grant's and Gicholir place at a place where people had been eating meat. They asked me to give them the knife and I gave them. We went with them to Mr. Grant's place. They asked Mr. Grant to telephone - then a Police Officer arrived with a Police car. Then we were brought to Nakuru. First we were taken to Buana Harries' place. We went as far as his gate. There we met that Police officer (Mr. Dalfreman). Then we returned. First we were taken to Gilgil. That same day about 4 p.m. we were taken to the Prison at Nakuru. We found Njeroge there in the Prison. It was he who told us Buana was dead. That is all.

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asked if he has any witnesses to call accused No.1 states: " I have no witnesses. I could have called the horse if the horse was able to speak".

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HIS HONOUR: (To accused No.2): The prosecution have now closed their case and there are three courses open to you, to give evidence from the witness box on oath in which case you are liable to be cross-examined by the Crown. The second course available to you is to make a statement from the dock not on oath in which case you cannot be cross-examined by the Crown. The third course which you may adopt if you so wish is to remain silent neither giving evidence on oath nor making a statement from the dock, and of course you may also call witnesses on your behalf.

ACCUSED NO. 2: I have one witness. I will give evidence on oath.

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WILFRED KOINE WA ROTINU Christian, sworn:

EXAMINED BY MR. SAVILLE:

- Q. 1265. You have lately been working for Captain Harries? --  
A. Yes.
- Q. 1266. At Njoro? -- A. Yes.
- Q. 1267. Do you remember the day when Jack White was killed? --  
A. Yes.
- Q. 1268. Were you at the farm on that day? -- A. Yes.
- Q. 1269. Did you sleep there the previous night? -- A. Yes.
- Q. 1270. What did you do when you got up in the morning? --  
A. I went with Njeroge at 6 o'clock.
- Q. 1271. Where to? -- A. To Harries' place. I was carrying  
a crate.
- Q. 1272. What were you going to do at Harries' place? --  
A. Bring the fowls.
- Q. 1273. Did you get them? -- A. Yes.
- Q. 1274. Were they in a crate? -- A. We got the fowls and  
placed them in the crate.
- Q. 1275. What did you do with the fowls? -- A. I carried  
them back to the butchery.
- Q. 1276. Did you put them down there? -- A. Yes.
- Q. 1277. Just tell us whereabouts you put them? -- A. To the  
left of the tank.
- Q. 1278. Is that the tank near the kitchen? -- A. Yes.
- Q. 1279. So that the tank was between the chickens and the  
kitchen door? -- A. Yes.
- Q. 1280. Did you see Mr. White that day? -- A. Yes.
- Q. 1281. Where did you see him? -- A. I saw him come with  
Wakahu.
- Q. 1282. From which direction? -- A. From the pigeries.
- Q. 1283. Were they both walking? -- A. Yes.
- Q. 1284. And what was Wakahu doing? -- A. He was holding a  
horse.

- Q. 1283. Did you see where they went to? -- A. They came to the butchery.
- Q. 1284. Then what happened? -- A. The Bwana was in front and Wakahu following.
- Q. 1285. Were any words used? -- . First of all the Bwana inquired about the meat which is called ham.
- Q. 1286. What happened then? -- A. At that time I was standing beside the fowls and holding one fowl which I was intending to pluck.
- Q. 1287. Was it dead or alive? -- . I had not killed it on account of the noise.
- Q. 1288. What noise? -- A. The Bwana grumbling.
- Q. 1289. Tell us what happened then? -- A. The Bwana came outside and stood near Wakahu who was holding the horse. He asked Wakahu to produce his registration certificate to be signed off. Then he struck Wakahu
- Q. 1290. What did he strike him with? -- A. His open hand.
- Q. 1291. What did you see next? -- A. I then saw the Bwana on the ground.
- Q. 1292. Did you see any struggle before that? -- A. I was attending to my work and I did not keep on looking at them because I thought Wakahu was only being beaten.
- Q. 1293. What happened then? -- . I saw the Bwana falling and asking "who is going to call the big Bwana". At that time I did not know where he had been stabbed.
- Q. 1294. When you saw the Bwana falling where was Wakahu? -- A. He was not near.
- Q. 1295. What do you mean by not near? Was he standing somewhere about the compound or had he gone? -- A. He was as far as that astari (40-50 feet).
- Q. 1296. What was he doing? -- A. He was standing there and when he heard Bwana ask who was going to call the big Bwana he ran away.

- .1297. What did Njeroge do? -- A. Njeroge went to call the Bwana skubwa.
- .1298. What did you do? -- A. I said to myself "If I am found here I will be accused of stabbing the Bwana. It is better for me to run away".
- .1299. Did you run away? -- . Yes because there was nobody else there.
- .1300. When you were standing by the chickens did the tank get in the way of your seeing anything? -- A. Yes but not much.
- Q.1301. When you ran away where did you run to? -- A. I went towards Bwana Samaki's place.
- Q.1302. Did you see Wakaha again? -- A. I saw him and I asked him why he had done that.
- Q.1303. After you saw him did you keep together? -- A. Yes.
- Q.1304. And where did you go? -- A. I told him "Let us go together". I told him Bwana had fallen and I asked him to go back to see if Bwana was dead. He didn't believe me.
- Q.1305. Where did you go to? -- . To Marashoni.
- Q.1306. And shortly after that you were arrested? -- A. Yes.
- Q.1307. It is said that you attacked the Bwana with a stick. Is that true? -- A. No.
- Q.1308. It is said that you grappled with the Bwana and held him round the hips and legs. Is that true? -- . No. After he was stabbed I was crying and following in the way Njeroge had gone because I was bewildered and didn't know what had happened.

CROSS-EXAMINED BY MR. HARRAGIN

- Q.1309. On that morning what time did you get to the butchery? A. 7 o'clock.
- Q.1310. On Monday mornings as a rule what is going on in and around the butchery at 7 o'clock? -- A. Pork is killed and baw.

- .1311. Are there any skins to be cleaned? -- A. That is entirely untrue.
- Q.1312. There are no skins to be cleaned? -- A. None.
- .1313. Either on Monday mornings or any other mornings? --  
A. Other days yes but not on that day.
- .1314. But did any people come there to clean skins that morning? -- A. No.
- .1315. Why not? -- . Because they know there are no skins to be cleaned on that day.
- .1316. Are you suggesting that there are never any skins to be cleaned on Monday mornings? -- A. None.
- .1317. And there is no truth in the suggestion that this Monday morning was an exception that there happened not to be any skins? -- A. Every Monday there are no hides.
- .1318. Were there any people about the place besides those you have mentioned? -- A. No.
- Q.1319. So that the only people in and around the butchery on this particular Monday morning were yourself, No. 1 accused, Evans White and Jerome? -- A. Yes there was no other.
- .1320. There were no Sandorobo women in the vicinity at all? --  
A. No.
- .1321. And did you see them when you were running away? --  
A. No.
- .1322. You never saw them -- . No.
- .1323. And you would have seen them if they had been there? --  
A. Yes.
- .1324. Did you see Agnes anywhere about there? -- A. No.
- .1325. Do you say that she was not there? -- . No.
- .1326. Doesn't she live there in that hut you saw pointed out to us? -- A. No.
- Q.1327. She doesn't live in that hut? -- A. All the time I have worked there I have never seen her.

- Q.1538. I am asking you if you knew whether Agass was living at the hut pointed out on 2nd May? -- A. On that day I did not see her.
- Q.1539. Will you go so far as to say that she was not living there? -- A. I would have seen her if she had been there.
- Q.1540. I will ask you once more whether she was there at the moment or not was she living in that hut? --  
. I don't know.
- Q.1541. You have told us that when you arrived back with the fowls you had one chicken in your hand when Wakahu and the Buana came along? -- A. Yes.
- Q.1542. How long had you been holding that chicken before they arrived -- A. I got it when they were only a few yards away.
- Q.1543. You took it out of the crate? -- A. Yes.
- Q.1544. Why didn't you proceed to kill the chicken? -- A. On account of the noise.
- Q.1545. When you say noise do you mean that the Buana was scolding Wakahu? -- A. Yes.
- Q.1546. So you decided to wait until the noise was over before you got on with your work? -- . Yes.
- Q.1547. So that you had nothing to do at that moment except stand and watch what was happening? -- . Yes but I could not see much because the tank concealed them. I could only see part of them.
- Q.1548. But you told your Counsel a moment ago that the tank was not much in the way when he wanted you to say it was in the way? -- A. Yes I said it was not concealing much.
- Q.1549. So that you could see most of what was happening? --  
A. Yes but not very much.
- Q.1550. You can see all right can't you? You have a good pair of eyes? -- A. Yes.



Q. 1341. And you stood some few yards from the participants?

A. Yes I was where you saw the feathers.

Q. 1342. And do you agree that Wakahu and Bwana White were standing on the spot that was pointed out on the grass? -- A. No they were this side nearer the door.

Q. 1343. Were they about 15 feet from the kitchen? -- A. Yes.

Q. 1344. And do you suggest that standing where you were you couldn't see what was happening 15 feet away? -- . In account of the tank.

Q. 1345. Be that as it may, you were able to see the one thing in favour of accused No. 1, namely the Bwana slapping the accused? -- A. Yes.

Q. 1346. And from then onwards when something was going to happen to Bwana White you could see no more? --

. Do you mean the stabbing?

Q. 1347. And the fighting? -- A. I admit that he was stabbed

Q. 1348. By whom? -- A. No. 1 accused.

Q. 1349. Deliberately? -- A. I believe he was stabbed by him because after he was stabbed I do not know what happened.

Q. 1350. You of your own accord said to me a moment ago "I admit he was stabbed by Wakahu". -- . Yes.

Q. 1351. Did you see immediately before the stabbing took place Wakahu being seized by the right hand by Bwana White -- A. No.

Q. 1352. Do you suggest to the Court that there was no struggle at all? -- A. Not much struggle.

Q. 1353. Was there any struggle? -- A. Yes.

Q. 1354. Just tell us how the struggle took place? -- . It was Wakahu wanted to run away and Bwana wanted to catch hold of him and beat him more.

Q. 1355. When Wakahu was slapped he tried to run away? --

A. I did not see him running.

- Q. 1554. How do you know he wanted to run? -- A. Because I saw him go round and I thought he intended to run.
- Q. 1557. Do you suggest that he went round like a top? --  
A. Yes.
- Q. 1558. Did he take the horse round with him? -- A. The horse was not there.
- Q. 1559. What had happened to the horse? -- A. It disappeared long before when it saw the fight.
- Q. 1560. When did this fight that you are now telling us frightened the horse take place? -- A. When the Buana slapped Wakahu.
- Q. 1561. At that time the horse ran away? -- A. Yes.
- Q. 1562. Was that the only fight that took place? -- A. Yes and they were left holding one another. The horse ran away.
- Q. 1563. Who was holding who and how? -- A. Buana was holding Wakahu by the wrist.
- Q. 1564. Which wrist? -- A. The left wrist. (demonstrates)
- Q. 1565. Did anything else happen? -- A. He hit him when he was holding him like that.
- Q. 1566. He started to hold him before he slapped him? --  
A. In all there were three slaps. At the first slap the horse bolted.
- Q. 1567. And did he grasp his wrist then or after the second slap or after the third slap? -- A. At the first blow he was not held. When he let go of the horse the Buana caught him and gave him two further blows.
- Q. 1568. He caught him with the left hand the way you have shown us? -- A. Yes.
- Q. 1569. And the Buana was standing on the right hand side of Wakahu? -- A. Yes.
- Q. 1570. What was Wakahu doing all this time the Buana was slapping him? -- A. He did not give his hand

peaceably.

- Q.1571. Well what did he do? -- A. He was held when he was trying to prevent being beaten.
- Q.1572. With both hands? -- . With one hand.
- Q.1573. Which hand? -- A. The left hand.
- Q.1574. And he was waving his left hand? -- . Yes and then he was held.
- Q.1575. What was he doing with his right hand? -- A. Nothing.
- Q.1576. Do you realize the position you demonstrated is a very difficult position to bring anyone into?  
A. Yes.
- Q.1577. So that you saw every detail up to that stage? --  
A. Yes. At that moment I saw Swana had a cut on the wrist.
- Q.1578. At which moment was that? After the third blow? --  
A. Yes Wakahu had already stabbed him and gone.
- Q.1579. You say "at that moment I saw Swana had a cut on the wrist"? -- A. Yes when they let go of one another.
- Q.1580. I have only got to the stage where the Swana had delivered the third slap. When was it that you saw the cut on his wrist? -- A. When they let go of one another.
- Q.1581. A very small cut wasn't it? -- . I saw only blood but I thought it was a big cut.
- Q.1582. Did you see any other blood except the blood on the hand? -- A. Not at that time. I saw blood later.
- Q.1583. The moment they parted what happened to Wakahu and what happened to the Swana -- A. Wakahu went and stood the distance have described (40-50 feet) then I saw Swana holding his right chest with his left hand (demonstrates).
- Q.1584. And you saw a lot of blood? -- A. Yes.

- Q.1385. And that was all over his chest? -- A. Yes.
- Q.1386. How did that blood get there? -- A. From the body where it was stabbed but at that time I did not know why. I thought it was coming from his wrist.
- Q.1387. Why? -- A. Because I thought it was a serious cut on the wrist.
- Q.1388. Did you know how he got that cut on the wrist? -- A. No I simply saw the blood.
- Q.1389. Now you have told us every detail about what the Swana did, how he slapped Wakahu and how he held Wakahu so that you saw everything that happened quite clearly? -- A. I saw as I have described.
- Q.1390. Just tell us one more detail. Where did this knife come from to stab the Swana? -- A. Wakahu had it.
- Q.1391. Where did he take it from? -- A. I don't know.
- Q.1392. Did you see him run either towards the kitchen or towards the butchery? -- A. No.
- Q.1393. From the time the Swana slapped him to the time of the stabbing they never parted company? -- A. No.
- Q.1394. So that if according to you the Swana was stabbed Wakahu must have had the knife on him? -- A. Yes.
- Q.1395. Where did Wakahu carry his knife? -- A. Knives are kept in the pocket but I think he might have taken it in the morning.
- Q.1396. And where would he have carried it? -- A. Maybe in the coat pocket.
- Q.1397. Do you know this knife exhibit 11? -- A. That is the knife.
- Q.1398. That is what knife? -- A. The butchery knife.
- Q.1399. You know that to be the butchery knife? -- A. Yes.
- Q.1400. Do you know that that knife was found on Wakahu when he was arrested? -- A. Yes.

- Q.1401. And will you agree with me that that is the knife that stabbed the Swana? -- A. Yes.
- Q.1402. You are quite certain of that? -- A. Yes.
- Q.1403. And when it stabbed the Swana it was in the hand of Wakahu? -- A. Yes.
- Q.1404. And you saw that? -- A. I know it is the knife but I did not see the actual stabbing.
- Q.1405. Why didn't you see it? -- A. Because I was there behind. If I had been in front I would have seen the stabbing.
- Q.1406. But after the stabbing you must have seen it in Wakahu's hand? -- A. Yes.
- Q.1407. You did see that in Wakahu's hand directly after they parted? -- A. Yes.
- Q.1408. Did you see any such manoeuvre as this, Swana pulling following Wakahu towards him, Wakahu butting the Swana in the chest and then Swana pulling Wakahu's hand so that he stabbed himself in the breast? -- A. I saw them leaning but I didn't see Wakahu's head strike the Swana's chest.
- Q.1409. I suggest to you when the Swana came up with Wakahu you and Njeroge were in the kitchen? -- A. I was outside with the fowls.
- Q.1410. There was Njeroge? -- A. In the kitchen.
- Q.1411. And that was when the fight started -- . Yes.
- Q.1412. So that Njeroge doesn't know anything about the beginning of the fight? -- A. He knows.
- Q.1413. How does he know if he was inside? -- A. He came outside.
- Q.1414. At what stage of the fight did he come out? -- A. Before the fight actually started.
- Q.1415. Did you ever that morning at any time have a bit of firewood in your hand? -- A. No I swear I had not.

- Q.1416. And Njeroge never at any time took a piece of firewood from you? -- A. No.
- Q.1417. And after the slapping you never saw Wakahu run towards either the kitchen or the butchery?--  
A. No.
- Q.1418. Does Wakahu always walk about with the butchery knife on him? -- A. Yes.
- Q.1419. Always? -- A. Not always, sometimes when he is slaughtering fowls.
- Q.1420. Was he going to slaughter fowls that morning? --  
A. No he had not started.
- Q.1421. But was he going to slaughter those fowls that you brought down? -- A. No.
- Q.1422. Therefore he had no need for that knife to slaughter any fowls? -- A. No.
- Q.1423. You told me just now that he had that knife with him whenever he was going to slaughter fowls. --  
A. At that time the butchery was already open.
- Q.1424. I didn't ask you that. -- A. Also other times he goes with that knife.
- Q.1425. Fowls should always be slaughtered with that knife. Is that your story? -- A. No.
- Q.1426. Don't you wring their necks? -- A. Yes.
- Q.1427. So there is no need for a knife to kill any fowls with? -- A. No.
- Q.1428. Therefore your suggestion that Wakahu takes that knife when it is necessary to kill fowls is nonsense? -- A. No because there is meat there always.
- Q.1429. We were discussing fowls, not meat. -- A. Don't you call it all meat. We had left him doing the meat work.
- Q.1430. Don't you know it is a fact that after the slap Wakahu ran and got that knife and that is why

he cannot give any account of his possession of it? -- A. No.

Q.1451. And didn't you see the Buana following him up? --

A. Yes but not to any particular place.

Q.1452. He must have followed him to somewhere? -- A. You mean after the stabbing?

Q.1453. After the slap but before the stabbing? -- A. He wanted to get away from the Buana.

Q.1454. And did he pull the Buana along? -- A. Yes.

Q.1455. How far did he do this? -- A. Only about a yard.

Q.1456. Wakahu was getting the worst of it wasn't he? The Buana was stronger than he was? -- A. I don't know.

Q.1457. You couldn't tell who was winning? -- A. No.

Q.1458. How long have you known Wakahu? -- A. Since I have been working there.

Q.1459. And he had been working with you? -- A. Yes but only for a few days.

Q.1460. But you knew him well enough to get him to spend the night with you at Marashoni? -- A. Yes.

Q.1461. When you found that the Buana had been stabbed and collapsed as you have told us and No. 1 accused had the knife in his hand why did you run off with this man with the knife and not go with Njeroge up to the house? -- A. I did not go with him. I was left there only with Njeroge.

Q.1462. And Njeroge went and reported the matter to Mr. Harries? -- A. Yes.

Q.1463. And you took a path which led you straight to No. 1 accused? -- A. Yes I overtook him. When I told him the news he was surprised and said it was not true.

Q.1464. What was he surprised at? -- A. He said "I can not stab him with".

- Q. 1445. Did he mean by that he had just given him a slight stab? -- A. Yes.
- Q. 1446. And he merely then expressed surprise that the Buana had collapsed as a result of it? -- A. Yes.
- Q. 1447. And at that time you knew that the Buana had collapsed - was covered with blood? -- A. Yes.
- Q. 1448. And you knew that that blood had been caused by No. 1 accused? -- . Yes.
- Q. 1449. And you chose him as your companion to go to your house 15 miles away -- A. He did not go with my wish.
- Q. 1450. Why did he go? -- A. Because he followed me.
- Q. 1451. Oh he just followed you? -- A. Yes he was behind me all the way.
- Q. 1452. And when you got there did you tell your father-in-law that this wretched murderer had followed you to your house and that you didn't want him? -- A. I did not tell Kigholi but I told my wife but not in detail.
- Q. 1453. Why did you not mention one word to your father-in-law? -- A. I refused to tell him because he is not friendly with me.
- Q. 1454. But you go and stay at his house? -- A. Yes.
- Q. 1455. And you take with you a gentleman, or a gentleman insists on going with you, whom you know has just stabbed the Buana? -- A. I could not catch him and beat him. I was also sorry for him.
- Q. 1456. You were sorry for him? -- A. Yes I thought he might do me bad things.
- Q. 1457. You said you were sorry for him? -- A. I was afraid of him.
- Q. 1458. Were you not sorry for him because the Buana slapped him? -- A. No.



- Q.1459. You didn't mind that at all? -- A. I was feeling sorry for the Swana.
- Q.1460. Yes but before that when the Swana was slapping Wakahu? -- A. I thought if he was being beaten it was on account of his work.
- Q.1461. You thought it served him right? -- A. Yes.
- Q.1462. You thought it was a right and proper thing for the Swana to hit him the way he did? -- A. No.
- Q.1463. You don't think that right? -- A. No.
- Q.1464. Didn't you then go and try to stop this wrong thing happening? -- A. No.
- Q.1465. You didn't try for instance with a piece of firewood to knock them both out so that they couldn't fight any more? -- A. No and I was sorry for the Swana because it was he who engaged me.
- Q.1466. And why didn't you take his part when Wakahu was going for him? -- A. Neither George nor I could interfere because it was due to the wrong done by the accused himself.
- Q.1467. So neither of you interfered? -- A. No.
- Q.1468. Which hand was Wakahu holding the horse with? -- A. With the left hand.
- Q.1469. So that there was the horse and then Wakahu and then the Swana all in a line? -- A. Yes but it was before the Swana did anything to Wakahu.
- Q.1470. Well at the time the Swana did do something to Wakahu what was the position? -- A. The Swana was standing in the same position and Wakahu and the horse when Wakahu received the first blow.
- Q.1471. Was the Swana standing on the right of Wakahu? -- A. Yes.

COURT RESUMED 8.50 P.M.

KOING WA RUTINU:

CROSS-EXAMINED BY MR. LEAN:

- Q.1473. When this fight took place at the butchery how long did it take from the time the slap was given until the Bwana was lying on the ground? --  
A. Not a very long time.
- Q.1474. Could you give us any indication of how long? --  
A. I can't say whether it was as long as 10 minutes time.
- Q.1475. Would a man be able to count say 50 while the thing took place? -- A. You could count up to 12.
- Q.1476. In fact it was all over very very quickly before you could really take in each detail? -- A. Yes.
- Q.1477. Am I not right in saying that it is quite a common thing for people working at that butchery to slip <sup>a knife</sup> into their pockets and carry it about from one job to another? -- A. Yes.
- Q.1478. Did you at any time previous to that quarrel between Mr. White and Wakahu hear Wakahu make any suggestion that he was going to attack Mr. White or hurt him in any way? -- A. No.
- Q.1479. When Wakahu was struck did you notice whether it was a hard blow or whether the various blows were hard or not? -- A. I could not tell.

RE-EXAMINED BY MR. SAYLIE:

- Q.1480. What happened to the chicken which you were holding in your hand when all this took place? -- A. I returned it inside the crate.
- Q.1481. Do you know what happened to it after that? --  
A. Nothing. I put it back amongst the others.

HIS HONOUR MR. JUSTICE TRACKER: Do you remember what clothes you were wearing on that day? -- A. Yes

the clothes which were brought here.

HIS HONOUR: Dark grey shorts? -- A. Yes but that was inside another pair of shorts.

HIS HONOUR: You heard Mr. Fox give evidence -- A. Yes.

HIS HONOUR: Can you explain how it is that he found human blood on those dark grey shorts? -- A. There was no blood. It was only used to slaughter fowls.

HIS HONOUR: Mr. Fox said he found two spots of human blood on the seat? -- A. I didn't go close to the Buana and how could I <sup>have</sup> had human blood

HIS HONOUR: Have you no other explanation to offer the Court as to how that human blood got on those shorts?

A. I did not sit down where the fight took place.

SAMUEL NJEROGH sworn:

EXAMINED BY MR. SAVILLE:

Q.1482. You used to work for Captain Harries? -- A. Yes.

Q.1483. That is at Njoro? -- A. Yes.

Q.1484. Do you remember the day Mr. White was killed? --  
A. Yes.

Q.1485. Did you sleep on the farm the night before? -- A. Yes.

Q.1486. What time did you get up that morning? -- A. Five o'clock.

Q.1487. And what did you do? -- A. I collected the things for Nakuru.

Q.1488. And then what did you do? -- A. I placed them in the motor car.

Q.1489. After you had collected the things and placed them in the motor car what happened? -- A. The motor car drove away and I was left there.

Q.1490. Did you see either of the two accused there that morning? -- A. Yes.

Q.1491. Both of them? -- A. Yes.

Q. 1492. And did you do anything with one or other of them? --

A. I went with accused No. 3 to Captain Harries' house.

Q. 1493. Why? -- A. To bring the fowls.

Q. 1494. Did you get the fowls? -- A. Yes.

Q. 1495. And where did you take them to? -- A. Back to the butchery.

Q. 1496. About what time was it when you got back to the butchery with the fowls? -- A. 7.30.

Q. 1497. And what happened to the fowls? -- A. We placed them outside.

Q. 1498. Whereabouts? -- A. To the left of the tank.

Q. 1499. Is that where all the feathers are? -- A. Yes.

Q. 1500. What did you do then? -- A. I went inside the kitchen.

Q. 1501. Did you see Mr. White that day? -- A. Yes.

Q. 1502. Where was he when you saw him? -- A. In the kitchen.

Q. 1503. You mean he came into the kitchen while you were there after you had put the fowls down? --

A. Yes.

Q. 1504. Did you speak to him or he to you? -- A. He spoke to me.

Q. 1505. And then what did he do? -- A. He went outside.

Q. 1506. Did you hear anything when he was outside? -- A. Yes.

Q. 1507. What did you hear? -- A. He was scolding Wakahu.

Q. 1508. Did you hear anything else? -- A. I heard the sound of a blow.

Q. 1509. Did you do anything when you heard that? -- A. I rushed out immediately.

Q. 1510. When you got out what did you do? -- A. I saw them holding one another.

Q. 1511. Who? -- A. Wakahu and the Bwana.

Q. 1512. Will you show us exactly what you mean? --

(Witness demonstrates with constable)

- Q.1513. Were they moving about? -- A. It was a very short time. By the time I said "Stop stop" he had stabbed him.
- Q.1514. How long was it between the time you heard the blow and the time you saw the stab? -- A. As long as it would take you to rush across the Court (20 ft.)
- Q.1515. I take it that you were at the kitchen door when you saw the stab? -- A. I was hearing to where they were standing.
- Q.1516. What did you do? -- A. I caught Sakaha.
- Q.1517. Then what happened? -- A. Swana told me "Let him go. He has killed me".
- Q.1518. Anything else? -- A. He said "Go and call the Swana wakaba".
- Q.1519. At that time was the Swana standing up or had he fallen down or what? -- A. He was walking and holding his left chest.
- Q.1520. How far did he go in that way? -- A. He had gone about 10 feet and was still going when I went away.
- Q.1521. You didn't see him fall? -- A. No.
- Q.1522. Can you give us any idea how long it was between the time you saw the stab and the time you went away? -- A. Immediately after he was stabbed I went away.
- Q.1523. But it must have taken him some time to move that 10 feet? -- A. Yes.
- Q.1524. About how long? -- A. So long (demonstrates).
- Q.1525. Did you see anything more after that? -- A. I went to call Mr. Harries.
- Q.1526. After the Swana had been stabbed what did Sakaha do? -- A. After I let him go he went away.
- Q.1527. How did he go away? -- A. He was running towards Swana Samaki's place.

- Q. 1528. When you went into the kitchen after bringing the fowls what did the second accused do? -- A. I left him standing there when I went inside.
- Q. 1529. Standing where? -- A. Beside the fowls.
- Q. 1530. When did you see him next? -- A. When I was going to call the Swana.
- Q. 1531. And where was he then? -- A. The same place.
- Q. 1532. Did you during that short time take a stick away from him, a bit of firewood or anything? -- A. No.
- Q. 1533. Did you at any time see him grapple with Swana White or with the first accused? -- A. No.
- Q. 1534. Do you know if he had killed any chickens? -- A. No because I was inside.
- CROSS-EXAMINED BY MR. PHILLIPS
- Q. 1535. Do you recognise that knife -- A. Yes.
- Q. 1536. Whose knife is it? -- A. The butchery knife.
- Q. 1537. Where was it usually kept? -- A. On the table in the grass roofed building.
- Q. 1538. Can you say whether this was the knife that you saw Takahu stab Swana Jack with? -- A. Yes it is.
- Q. 1539. Had you seen it earlier that morning? -- A. No because I was very busy.
- Q. 1540. Is it always kept inside the butchery or does anyone ever take it away? -- A. Takahu sometimes takes it with him when he goes away in the evening.
- Q. 1541. Did you ever see him carrying it? -- A. Yes in the night.
- Q. 1542. Where did he usually carry it? -- A. In his hip pocket.
- Q. 1543. Was this knife ever used in the kitchen? -- A. No.

- Q.1544. Do you mean it was never taken into the kitchen? --  
A. Sometimes when we were using it in the  
butchery and want to go to the kitchen we go to  
the kitchen with it.
- Q.1545. Is it ever used for killing fowls? -- . No.
- Q.1546. How are the fowls usually killed? -- A. By  
strangulation.
- Q.1547. Did you hear any conversation between Mr. White and  
the first accused before this fight took place? --  
A. Yes.
- Q.1548. Will you describe that conversation? -- A. The  
Bwana asked Wakahu about the hen whether it was  
cooked and he replied No. The Bwana asked him  
"Don't you know 'wahili". He replied "Why".  
Bwana said "I told you to take the meat at 1  
o'clock yesterday. Why did you not do so?"  
He said "Give me your registration certificate  
and off you go". Wakahu replied "You have not  
engaged me. I am an employee and you are also an  
employee". Then I heard the blow.
- Q.1549. Could you tell from the sound of the blow whether  
it was a hard blow? -- (Witness demonstrates  
slap with open hand).
- Q.1550. What were you doing all this time inside the kitchen?  
. I was making fire.
- Q.1551. I think the place where the fire is is opposite the  
doorway? -- A. Yes.
- Q.1552. And from the fireplace you can see out through the  
door? -- A. Yes if I turn round.
- Q.1553. Is that the view you get from where you were at the  
fireplace? (Photo No. 10 Ex. 2) -- A. Yes.
- Q.1554. Didn't you turn round all the time this conversation  
was going on? -- A. No because I was blowing the  
fire and making it.

- Q.1555. When you did turn round did you see them immediately before you ran out of the kitchen? -- A. I turned and saw and ran.
- Q.1556. You saw the Buana and Wakahu before you started to run? -- A. Yes, holding one another.
- Q.1557. And about how far were they from the kitchen door? -- A. About 30 feet from the fire.
- Q.1558. Were they nearer to the kitchen or to the butchery? -- A. Midway between.
- Q.1559. Did you see the horse at that time? -- A. Yes it was galloping.
- Q.1560. When you first noticed the horse had it already gone far or was it quite close? -- A. It was close.
- Q.1561. About how far away? -- A. From the witness box to the door.
- Q.1562. And then did you run out immediately? -- A. Yes.
- Q.1563. Did you run straight to where they were? -- A. Yes to go to separate them.
- Q.1564. When you first turned round and saw them can you remember if the Buana was wearing his hat? -- A. Yes, he had it on.
- Q.1565. Was Wakahu wearing anything on his head? -- A. Yes.
- Q.1566. Do you see either of those hats here? -- A. Yes.
- Q.1567. Is that the Buana's hat (Ex. 4)? -- A. Yes.
- Q.1568. Is that Wakahu's hat (Ex. 5)? -- A. Yes.
- Q.1569. Are you quite sure that they were both still wearing their hats when you first turned round? -- A. Yes.
- Q.1570. Did you see either of those hats fall off? -- A. Yes.
- Q.1571. When was that? -- A. After the stabbing they bent down and their hats fell off.
- Q.1572. You are quite sure that was after Wakahu had stabbed the Buana in the chest? -- A. Yes.



- Q.1573. Now where were you exactly when akahu stabbed the Bwana? -- A. I was about 9 feet away.
- Q.1574. Were you inside the kitchen or outside? -- . Near the tank.
- .1575. And were you running at that moment when the stabbing took place? -- A. Yes in order to separate them.
- Q.1576. As you were running towards them had the Bwana got his back towards you or his face or his side?--
- A. He was facing me.
- Q.1577. And what about Wakahu, what was his position? --
- A. He had his back towards me.
- Q.1578. When did you first notice the knife in his hand?--
- A. When I came to the door.
- Q.1579. Exactly how was he holding it when you first noticed the knife? -- A. He was holding it raised above his head.
- Q.1580. Do you know where he got the knife from? -- . No.
- Q.1581. And then did he immediately stab the Bwana?--A. Yes
- Q.1582. Did you say anything or shout anything when you came out of the kitchen? -- A. I said in Kikuyu "Stop stop".
- Q.1583. To whom were you saying that? -- A. To akahu.
- Q.1584. Did you see these Wandorobo women there that morning? -- A. Yes.
- Q.1585. What time did you first see them that morning? -- . 6 o'clock.
- Q.1586. And what were they doing then? -- A. They come usually to look for hides to clean.
- Q.1587. And when you first saw them that morning were they sitting down or standing up? -- . They came and sat down at the usual place.
- Q.1588. Is that near the end of the kitchen? -- A. Yes.

- Q.1589. The other end from where the fowls and the tank are? —  
A. Yes.
- Q.1590. Were they all three there? — A. Yes.
- Q.1591. And were they still there when this fight took place  
A. Yes.
- Q.1592. Did you notice what they were doing at that time? —  
A. I saw them collecting their belongings to run away.
- Q.1593. Was that after the stabbing? — A. When I was about to go and call.
- Q.1594. And were they in a position to see this fight? —  
A. Yes because they were outside.
- Q.1595. Did you see Koine run away after the stabbing? —  
A. I left him there.
- Q.1596. Where? — A. Where he was standing near the fowls.
- Q.1597. When you ran out of the kitchen did you run fast? —  
A. Yes to go and stop them.
- Q.1598. And it was while you were running and after you got out of the kitchen that the stabbing took place? —  
A. Yes.
- Q.1599. When you saw the stabbing did you stop immediately or did you continue running towards them? — A. I continued.
- Q.1600. Right up to where they were? — A. Yes, they just left go and Wakahu met me walking backwards.
- Q.1601. What did you do? — A. I caught him round his body.
- Q.1602. And then what happened? — A. Swana asked me to let him go and to go to call.
- Q.1603. And had Wakahu still the knife in his hand? — A. Yes.
- Q.1604. Didn't you take hold of the Swana? — A. No.
- Q.1605. Was the Swana standing still or was he staggering along? — A. He was staggering along.
- Q.1606. In which direction? — A. Towards the butchery.

- Q. 1607. Had he got his back to you? -- A. Yes when he was going.
- Q. 1608. And in which direction did you start to run to the house? Did you pass by the butchery? --  
A. Beside the butchery.
- Q. 1609. Which part of the butchery was Mr. White going towards? The same part as you? -- A. No he was going towards the other entrance (indicates on Photograph No. 8)
- Q. 1610. How far away was the Swana from the door of the butchery when you last noticed him? -- A. About 25 feet.
- Q. 1611. At the time of the stabbing or just before or just after did you see anyone else there besides the people mentioned, the two accused, yourself, the three Wandorobe women and Swana White? -- A. No.
- Q. 1612. Do you know Agnes? -- A. Yes.
- Q. 1613. Did you notice her there that morning? -- A. No.
- Q. 1614. But I suppose she could easily have been over by her hut without your noticing her? -- A. Yes.
- Q. 1615. Was the conversation between Wakahu and the Swana carried on in a loud voice? -- A. In a half way voice.

CROSS-EXAMINED BY MR. LEAN

- Q. 1616. The morning of the quarrel did you hear Wakahu say anything about wishing to kill the Swana or hurt him or injure him in any way? -- A. No.
- Q. 1617. Does it strike you as peculiar for Wakahu to have been carrying the knife about with him that morning? -- A. Perhaps.
- Q. 1618. Was it quite common for him to carry that knife about with him? -- A. Yes.

- Q.1619. Tell me how is it that you managed to see so much in such a little time? -- A. When a thing happens at once you can see at once.
- Q.1620. How is it you were able to see the Wandorobo women because they must have been sitting almost behind the kitchen? -- A. Because I had left them sitting outside when I went inside the kitchen.
- Q.1621. But did you actually see them after the fight? -- A. I saw them when I was holding Wakahu.

NO RE-EXAMINATION

MR. SAVILLE: That is the case for the second accused My Lord.

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COURT ADJOURNS AT 3.50 P.M. UNTIL 9.30 A.M.  
ON FRIDAY 29th JULY 1968

MR. SAVILLE ADDRESSES COURT ON BEHALF  
OF THE SECOND ACCUSED

May it please Your Lordship, Gentlemen, yesterday I submitted to this Court that the accused No. 2 whom I am defending had no case to meet. If that argument had succeeded he would then and there have been discharged, but that argument did not succeed for the reason that there was some evidence against him. Now although there was some evidence against him that does not necessarily mean that the evidence is sufficient for you to convict him even had he not given evidence or called any evidence on his behalf because before you can bring in a verdict of guilty you must be satisfied beyond reasonable doubt that he did in fact commit the offence with which he is charged. I submit to you that even if you accept the evidence of the Wandorobo women and Agnes you must still be in doubt as to whether the accused committed murder or not because, even assuming that he grappled with the deceased and was still grappling with him when he received the fatal blow, in the absence of some evidence of motive or intention I submit you must come to the conclusion that he may have been intending to separate the two people fighting. It is true he might have been intending harm to the deceased but you cannot convict a man because he might have committed the offence; you must be completely satisfied beyond reasonable doubt that he did commit it. But I submit that the second accused's case is very much stronger than that. I am going to submit to you that the evidence of the Wandorobo women is not entirely reliable and that the real truth of the matter was told to you plainly and explicitly by the witness Njeroge and I would ask you to accept his story of what happened on that day.

The first striking point about the evidence of the Sandorobo women was this, that when they gave evidence before the Magistrate some months ago they told a story each one agreeing more or less with the other; but when they came and gave evidence before you here in this Court they again gave a story which agreed each with the other but that story was different from the one they told the Magistrate previously. Now Gentlemen, I agree it is possible for a witness to tell one story in the court below and a slightly different story in the second court and that she might still be believed but I cannot believe and I submit you cannot believe that two or three people can change their stories in exactly the same way unless they had discussed the matter between themselves and agreed to change it. Now you have heard these Sandorobo swear on oath that they have never discussed this case from the time it happened until they came into Court except when they told their stories to one or two people. I submit that in view of this remarkable change they must have discussed the case and in that connection I would draw your attention to a remarkable statement made by the second Sandorobo woman Kimanyisho. When she was asked what happened to the piece of firewood which the second accused was alleged to have had in his hand she said she didn't know but that the witness Beliani could probably tell me that. Now Gentlemen, I submit that when I asked the witness that question I had quite unconsciously hit upon one item which they had not discussed together and that the witness was afraid that she might say something different from Beliani. You will recollect that she said something like this; that Beliani had told me where the piece of firewood went or could tell me. Another curious

point about that stick is that it has never been produced or found on the scene. You heard the evidence of Captain Harries. You heard what a remarkable knack he had for seeing details. You will remember that it is highly probable that nobody was on the scene of the killing from the time the second accused left until Captain Harries arrived. Captain Harries noticed where the chickens were. He noticed that one was loose and he noticed the position of the hats but he never said anything about a piece of firewood lying about that compound. He left the scene exactly as he found it and a trained Superintendent of Police then examined it. He noticed all the details that Captain Harries had noticed but he made no mention of having found a bit of firewood there.

The second Ndorobo woman Kimariyisho when asked about what hat accused No.1 was wearing again gave an unconvincing answer. That I submit was another thing she had forgotten to discuss with the witness Beliani.

Now there is the question of the blood found on the second accused's trousers. All the evidence of the blood goes to show is this, that there were two places on the seat of the trousers where human blood might have been found on either or both of those two spots, that the quantity of blood for all the witness could say was a very small proportion, probably, of a drop; that it might have got there at any time from the time those trousers were made until the time the Public Analyst got them, so I do submit that even if you consider the evidence of the blood any more than that it cannot be evidence against the second accused, but when you consider the only evidence of any contact between accused No.2 and the deceased, namely, that he had the deceased round the hips and eventually got him round the legs, I submit you will find

it very difficult to believe that the blood ~~got~~ on the seat of his trousers was the blood of the deceased. Furthermore, consider the evidence of the Wandorobe women in conjunction with that of the Doctor. I think you will find it established that the deceased staggered a considerable distance from the time he was stabbed until the time he fell down. The Doctor said that if the deceased was being grappled and was being held round the legs at the time he was stabbed he would have expected him to fall over on his face. He also said in evidence before you that once the deceased was down he would not have the strength to get up again. That, gentlemen, I submit is a very important point to bear in mind when you consider the truth or otherwise of the Wandorobe women's story. If the second accused was grappling with such little vigour that he didn't upset the balance of a man stabbed to the heart it would hardly be possible that he would be intending the deceased any harm or that he was intending to aid or assist the accused No.1. To revert to the question of the blood, I submit to you that the most curious fact is that although the accused No.2 was alleged to have gripped the deceased from behind so that his hands came in front of the deceased not a drop of blood was found anywhere in front of him or on his hands or arms or coat. I submit that this must lead you to the gravest hesitation in giving too much credence to the story of the Wandorobe women. I am not suggesting that they were not there. I am suggesting that when they saw the first blow delivered they were more concerned with flight than with watching what happened, and that small incident which they witnessed was the seed from which grew in their minds and imaginations the stories which they eventually told in this Court.



Regarding the witness Agnes I submit you will take no notice of her evidence at all. Assuming she saw something happening from somewhere near her hut it was too far away and there were too many obstructions to her view for her evidence to be of any value because what took place took place so rapidly and each movement was so rapid that she could not have grasped each detail, and Gentlemen, in deciding this case it is the minutest details which must have most value as evidence.

Now Gentlemen I would ask you to consider the story of the witness Njeroge. I submit he was the only witness before you who was really capable of describing with accuracy what he saw and when I say the only witness I mean the only witness to the actual events which happened. I say that because he described them with such vividness. Every action which he described was one which was possible and which I submit was highly probable. He was the only witness who could give you any idea of how long the episode took. According to him the whole thing was over in a very short time indeed and hardly anybody there could do anything or had time to do anything from the time accused No.1 was struck on the face till the time the deceased was stabbed - in fact, just time for Njeroge to rush 30 or 40 feet; and I submit that if it took such a short time (as I am asking you to believe it did) Njeroge would never have had time to go taking pieces of firewood out of the hand of accused No.2. Njeroge was cross-examined and in no one instance did he falter. He reported immediately to Captain Harries what had happened and then he immediately fled to the Police. There is no suggestion before you by the Prosecution that he made any different statements to the Police than those he made before you yesterday. Gentlemen if you are in any doubt even as to which to believe the accused is

entitled to his acquittal because according to the Law if you have any doubt you must acquit; and furthermore according to the Law the accused must be presumed innocent until he is proved guilty. I will admit that in running away as he did the accused was foolish but I do suggest that the evidence he gave before you yesterday was reliable in all material respects. It may be that he tried to protect the first accused but under cross-examination he told all that he knew. His intelligence is obviously not so great as that of Njeroge and I submit that he was unable to grasp the detail that Njeroge did and that for the same reason in the first fright he had at seeing White killed he did the first thing that came into his head and ran away as hard as he could, which after all is exactly the same as the Wenderobe women did, and you are not asked to presume any guilt because they ran away. Were they not to be expected to report just as much as the accused No. 2? It is exactly what /gnee did. Wasn't she just as much to be expected to make a report? So I submit, Gentlemen, you will not pay too much attention to the evidence of his having run away and I submit that such evidence is not anything like strong enough to bring you to any conclusion that the presumption you must make that he is innocent is in any way rebutted by it. On the evidence I submit that there need be no doubt in your minds - no reasonable doubt - that the second accused is innocent.

I would ask you to forget anything you have heard about this case; anything that you may have been told outside this Court, and judge the accused No. 2 on the evidence that has been led before you and acquit him.

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MR. PHILLIPS ADDRESSES THE COURT ON BEHALF  
OF THE PROSECUTION

May it please Your Lordship, Assessors, you have listened with patience to this lengthy and difficult case and I think you will agree with me that the issues have now become comparatively clear and simple. To begin with there are certain facts which are established beyond all question. Firstly it has never been in doubt that Mr. White was killed in that butchery compound on the morning of the 2nd May. Secondly whoever else was there or was not there on that morning it is quite clear that at any rate these two accused and Jerome were there within a few yards of Mr. White when he was stabbed to death, and thirdly, and may I stress this point, it is also abundantly clear that at the moment when Mr. White received that fatal stab in the chest he and the first accused Anahu were grappling together. Leaving aside for the moment the question whether anyone else took part in that struggle it is perfectly clear and in fact it is admitted by the first accused that he and the Evans were struggling together when that blow was inflicted. So far these facts are not disputed.

Now I would ask you to go a step further and on the evidence I don't think you will have any difficulty in making that further step. The first accused has put forward the defence that the fatal wound was self-inflicted accidentally by Mr. White himself during the course of the struggle. I submit to you with confidence that that story is quite beyond belief. That defence was not put to any of the crown witnesses and particularly it was not put to the Doctor but I don't think there is any doubt that if it had been put to the Doctor he would have dismissed it as something which was quite impossible. In any event

there is not one tittle of evidence apart from the accused's own statement that Mr. White ever had a knife in his hand and although the different witnesses may differ on many points if there is one single point on which they are agreed it is that it was Wakahu's hand which held the knife and which administered that fatal blow and here and now I ask you to accept those facts as established beyond all reasonable doubt and if those facts are accepted as proved then at the very least the first accused is guilty of manslaughter. I say at the very least because I shall go on in a moment to consider the question whether he is not guilty of murder but I ask you to accept this at the moment that at the very least he is guilty of manslaughter because in this case there can be no question at all of self-defence. I would refer Your Lordship here to Section 18 of the Penal Code to which the learned Attorney General referred in his opening address. The only possible justification for striking that blow would have been if the first accused were in danger of suffering some inevitable and irreparable evil and if he did no more than was reasonably necessary to avoid that evil and if the evil inflicted was not disproportionate to the evil avoided. The evidence here shows clearly that Mr. White was unarmed and I ask you to dismiss without hesitation the possibility of this retaliation with a deadly weapon being necessitated and justified. That defence is ruled out, and with regard to the question of provocation it is clearly laid down in law that no provocation whatever can render homicide justifiable or even excusable it may have the effect of reducing the offence from murder to manslaughter. I don't think my Lord I need cite any authorities on that point. I would merely refer Your Lordship to page 867 of the 29th edition of Archbold.

Now we come to the question whether the offence committed was murder or manslaughter, and that brings us to the consideration of the evidence of the eye-witnesses: I think at certain stages of the case it has been suggested that these Wandorobo women might not have been there at all but I think now having heard all the evidence you will not be left in any doubt whatever that they were there. You have the evidence of Mr. David and his assistant Sungura. You have also the evidence of the headman Teya who saw them leaving their home that morning and going down to the butchery as usual and who later saw one of the women running away from the vicinity shortly after Mr. White was killed. You have the evidence of Ejeroge and whatever may be your opinion as to the part that Ejeroge played in this affair there can be no conceivable reason why he should say they were there if they were not there. Therefore I ask you to accept it that these women were there that morning in the place pointed out to you and that they were in a position to see what happened, and they have given their evidence in this Court and described to you what they say they saw. A lot has been made, and no doubt will be made further by my learned friend Mr. Lean when he comes to address you, about the discrepancies in the evidence of these women. I don't intend to go into that question at any length. It is mainly a question of fact for you to decide, but I think you will agree with me that the fact that you cannot accept the evidence of a witness in every single detail does not necessarily mean that that witness is not genuinely trying to give an account of what he saw and it does not mean that you must reject that witness's evidence in toto. Now on the one side you have the story told by these women supported to some extent by Agnes. On the other hand you have the

account given by Hjeroge and the second accused. There is no material difference between these two different accounts in respect of the place where the stabbing took place but there are divergencies in two important respects. Firstly as to the question whether after being slapped Wakahu ran to one of the buildings followed by Mr. White or whether on the other hand immediately after the slap they grappled there and then, and the second point of divergency is on the question of the part played in the struggle by the second accused and Hjeroge. Now there are two possible explanations which may suggest themselves to you to account for these divergencies. First of all you may think that Hjeroge and the second accused have reasons of their own for not being entirely frank as to the part they played in the affair. In the case of the second accused the reason is obvious and in the case of Hjeroge he may be partly concerned to help to exonerate the second accused and he may also think that the best policy from his own point of view is to represent himself as having been a witness rather than a participator in the struggle. Even if that explanation does not commend itself to you you may still think that the evidence of these women may be reconciled to a large extent with the evidence of Hjeroge at any rate as far as it concerns the evidence that the first accused ran to the butchery immediately he was slapped. Hjeroge has told you that he was inside the kitchen blowing the fire and that the fireplace is opposite the doorway so that he must have been leaning down with his back to the door. As has been pointed out to you by my learned friend Mr. Saville the events probably happened very quickly on this occasion and it is quite possible that Hjeroge didn't notice the first slap and that his attention was not attracted till after Wakahu had run down to the butchery and come back. If you accept that

it goes a long way towards reconciling the story told by the woman with the story told by Njeroge because Njeroge has told you that he rushed out of the kitchen and was only a step or two away when the fatal blow was struck. Of course I am not asking you to accept that as the correct version. I am merely suggesting it as a possibility at this stage in case you were to find that Njeroge's story was entirely true but I am going to submit to you that the story of the Wandorobu women is to be preferred to the evidence of Njeroge and that the probable explanation of these discrepancies is the first alternative, namely, that Njeroge is trying to shield himself and the second accused. Picture to yourselves these women sitting waiting outside the kitchen that morning before Mr. White arrived, and it appears from the evidence that they were at that stage merely sitting and waiting, they had nothing else to do but to look round and watch what other people were doing and it is the most natural thing in the world that when Mr. White arrived they should watch what he did, and it is still more natural that when a row started between Mr. White and Wakahu they should watch all the more carefully and with all the greater interest. It is certainly more likely that they watched the whole proceedings carefully than that Njeroge did for Njeroge was inside the kitchen and what do they say? They say that Wakahu ran down to the butchery just inside the hutchery door. It has been proved that the butchery knives were normally kept in the butchery on a table just inside the door. There is evidence that the knife with which Mr. White was stabbed and which was found on Wakahu at the time of his arrest was one of the butchery knives. Now there is evidence to suggest that the first accused might have had that knife in his pocket but I suggest to you that it is much

more probable that it was in its usual place inside the butchery, so that on that point of how Wakahu got the knife the story told by these women is consistent with the probabilities of the case.

Now if the story told by the Sandorobo women is accepted as being substantially correct two questions arise, firstly, accepting the facts established by their evidence do those facts constitute murder; and secondly is the second accused jointly guilty with the first accused of the offence that was committed? The case for murder depends on the evidence that Wakahu ran to fetch that knife. I don't say that it depends simply and solely on that evidence but that is the most important factor in the charge of murder. With regard to the question of Law My Lord as to whether these facts, assuming for the moment they are accepted, would constitute manslaughter or murder I would refer to two English cases by way of illustration. They are leading cases on the point. The first is *Rex v Hayward* which is reported in 6 Carrington & Payne at page 157 and the report to which I am referring is contained in Volume 173 of the English Reports at page 1188. That was a case in which a struggle took place between the accused and the deceased in the course of which the deceased kicked the accused and the accused then went a distance of 200 or 300 yards and proceeded to get a knife and it appears that the deceased followed him and when they met again the accused stabbed the deceased with the knife and in summing up to the Jury the learned Chief Justice Tindal said that if the Jury were satisfied "that the death of the deceased had been occasioned by the prisoner having stabbed him with a knife or some other sharp instrument, of which there could be little doubt, the



remaining and principal question for their consideration would be whether the mortal wound was given by the prisoner while smarting under a provocation so recent and so strong, that the prisoner might not be considered at the moment the master of his own understanding; in which case, the law, in compassion to human infirmity, would hold the offence to amount to manslaughter only or whether there had been time for the blood to cool, and for reason to resume its seat, before the mortal wound was given; in which case the crime would amount to wilful murder. That, in determining this question, the most favourable circumstance for the prisoner was the shortness of time which elapsed between the original quarrel and the stabbing by the prisoner; but, on the other side, the jury must recollect that the weapon which inflicted the fatal wound was not at hand when the quarrel took place, but was sought for by the prisoner from a distant place. It would be for them to say, whether the prisoner had shown thought, contrivance, and design, in the mode of possessing himself of this weapon, and again replacing it immediately after the blow was struck; for the exercise of contrivance and design denoted rather the presence of judgment and reason, than of violent and ungovernable passion". In that case the prisoner was convicted of murder.

There is another case in which the killing was effected with a knife and which seems to present some parallel to the present case and that is the case of Rex v Lynch which is reported in 5 Carrington & Payne at page 394 and I am referring to the same volume of the English Reports at page 936. The head note says:

"It is not every slight provocation, even by a blow, which will, when the party receiving it strikes with a deadly weapon and death ensues, reduce the crime from murder to manslaughter."

In that case there was a scuffle during which the deceased struck the prisoner in the face giving him a black eye and the prisoner returned shortly afterwards with a knife and stabbed the deceased. In that case eventually the conviction was manslaughter but I think it can be distinguished from the present case because it was found from the evidence to be uncertain whether in fact the prisoner went to fetch the knife and also there was no clear evidence as to the length of time which elapsed and therefore Lord Tenterton said to the Jury:-

"If you think that there was not time and interval sufficient for the passion of a man proved to be of no very strong intellect to cool, and for reason to regain her dominion over his mind, then you will say that the prisoner is guilty only of manslaughter."

I have selected these two cases as being on each side of the line; one was murder and the other was manslaughter. I submit that the facts of the present case come between the two and it would be for Your Lordship to say on which side of the line they are.

HIS HONOUR: Is the Crown now saying that there is a possible verdict of manslaughter on these facts?

MR. PHILLIPS: Naturally My Lord I have to entertain the possibility of such a verdict because Your Lordship will no doubt in summing up to the Assessors refer to the possibility of manslaughter. I have chosen cases which illustrate murder and also illustrate manslaughter with a view to suggesting that perhaps the facts in the present case come nearer to the case of murder than to the case of manslaughter.

HIS HONOUR: Supposing I were to find as a fact that the accused had not run to the butchery for the knife but

that he had the knife in his pocket and pulled it out and stabbed White, is the Crown now arguing that that cannot be murder also having regard to the nature of the provocation, the slap on the face?

MR. PHILLIPS: No My Lord, I don't necessarily admit that that is not murder. In fact I was going to refer Your Lordship to the case of Rex v Frank Meale which is reported in the Law Reports of the Court of Appeal for Eastern Africa, 1956 Volume, page 102, and the head note reads:-

"That where a deadly weapon is used the provocation must be great indeed to reduce the offence to that of manslaughter"

I would like to stress that principle very strongly because in this case the provocation, although there apparently was provocation in that the deceased slapped the accused, was not I submit such as to justify killing with a deadly weapon or even to have the effect of reducing the offence to manslaughter.

HIS HONOUR: Now you are arguing that it is murder and nothing else?

MR. PHILLIPS: All along I have been arguing that. I quoted a case of manslaughter in which I suggested the facts were more favourable to the prisoner than in the present case and also because in that case the head note is "It is not every slight provocation, even by a blow, which will, when the party receiving it strikes with a deadly weapon and death ensues, reduce the crime from murder to manslaughter." In other words it was contemplated in that case that if the facts had been clearly established beyond doubt then the conviction would have been for murder and not manslaughter and the only reason for manslaughter was because there was some doubt about the facts.

HIS HONOUR: What view of the facts most favourable to No.1 accused would justify a verdict of manslaughter?

MR. PHILLIPS: With respect My Lord it is not for me to say what facts would justify the offence being reduced to manslaughter but I suggest that the most favourable version of the facts which Your Lordship could possibly find would be that the accused after being slapped immediately grappled with Mr. White and that he had the knife in his pocket and in the course of the struggle he took the knife out of his pocket and stabbed Mr. White.

HIS HONOUR: Do you say that would be manslaughter?

MR. PHILLIPS: No, My Lord, I don't, and as Your Lordship will understand I am not accepting that version as correct, but assuming for the sake of argument that it is correct I still submit that those facts constitute murder.

HIS HONOUR: That is what I want to be perfectly clear about. I want to know whether the Crown says that on the most favourable interpretation of the facts they agree that would justify a verdict of manslaughter.

MR. PHILLIPS: I must make it clear, My Lord, that I am not attempting to usurp the functions of the Court. I am submitting that there is a case of murder.

HIS HONOUR: And you stand by that?

MR. PHILLIPS: Yes My Lord.

HIS HONOUR: You do not agree that on the most favourable view of the facts to No.1 accused a possible verdict would be manslaughter

MR. PHILLIPS: I must allow, My Lord, for the possibility of manslaughter. If the facts were so clear that it would be nothing else but murder then it would be unnecessary for me to occupy Your Lordship's time. I naturally agree that there is a case which can be

argued and argued strongly by my learned friend that this is manslaughter. I think that he can argue it strongly and no doubt will, but I also claim that I can argue equally strongly that it is murder. The final decision of course rests with Your Lordship, and it is a question of fact.

I have attempted to put before Your Lordship the legal principles involved and I would stress particularly the principle laid down in the case of Frank Mwale, that where a deadly weapon is used the provocation must be great indeed to reduce the offence to that of manslaughter and here a deadly weapon was used and it is for Your Lordship to say whether the provocation received was sufficient to enable the offence to be reduced to manslaughter. I suggest that the retaliation was so much out of proportion to the provocation received that it must amount to murder.

I don't think I need occupy any more of Your Lordship's time on the question of Law and in fact I have very little more to say. I would revert once more to the question of whether the evidence of these women is to be accepted because on that depends whether the second accused is also to be included as a joint offender with the first accused in whatever offence was committed. I don't think there is any need for me to repeat the arguments that were addressed to the Court yesterday by the learned Attorney General. If you accept the evidence of the women the position is that the second accused ran out and joined in this fight and it is quite clear from their evidence that he didn't join in it merely in order to separate the combatants. He joined in on one side; in other words he joined in the attack on White, and the fact that he attempted to strike White with a piece of

firewood is an indication of his intention. That blow with a piece of firewood if it had been delivered would have been sufficient to cause grievous harm but that is not the only fact on which the case against him depends because according to the evidence of the women he joined in this fight after White had already been stabbed on the wrist with a knife, and if he did so then it is clear that he joined in that attack on White knowing the nature of that attack and knowing that it was a murderous attack; and here I would again refer to Section 22 of the Penal Code which says:-

"When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence."

No one in the world can for a moment suggest that if the facts are as the women state and the first accused was fighting with Mr. White armed with this deadly weapon with which he had already wounded him in the wrist it was not a probable consequence of that fight that Mr. White would be killed or at any rate suffer grievous harm, and even after the second accused was dispossessed of the piece of firewood he still continued to give material assistance to the first accused in his fight with Mr. White and it seems clear that without that assistance Wakahu would never have succeeded in stabbing Mr. White.

HIS HONOUR: Supposing the facts were all as the Prosecution alleges with regard to No. 2 accused except that he did not see the knife and he did not see the blood on the wrist but assuming he did everything else, attempted to

hit White on the head with a piece of firewood and grappled with him what is the view of the Crown then?

MR. PHILLIPS: That again, My Lord, is a question of fact whether there was a common intention. Here you have two men on this assumption who are making <sup>an</sup> attack on the deceased. They both have the intention we assume of inflicting grievous bodily harm - I am accepting it that the second accused did try and hit him with a piece of firewood - that in itself I suggest is sufficient to indicate intention to do grievous bodily harm. Whether it is common intention is a question of fact.

HIS HONOUR: Is there anything in these facts from which I could infer common intention? Supposing it were held that he didn't see either the blood or the knife?

MR. PHILLIPS: I must say, My Lord, that I am inclined to think it might be difficult to infer common intention but I would stress the fact that this argument is purely hypothetical. It is never possible to prove the intention of a person except from his outward conduct. All that can be proved is that the knife and the blood were there for him to see and as the learned Attorney General pointed out he had two perfectly good eyes with which to see them. It remains for the Court to draw or not to draw the inference that he did see them; and if he did in fact see them then I submit that there can be no question that there was a common intention and that he is equally guilty with the first accused.

Now with regard to these spots of blood which were found on the back of the second accused's trousers, is it not a most natural thing that if the second accused had been clasping Mr. White from behind at the moment when the fatal blow was delivered he should have got some blood on his hands and having got some blood on his hands it is not also the most natural thing in the world

for him to wipe his hands on the back of his trousers

Finally I would ask you to consider whether it is likely that these Wandorobo women are telling a fabricated story. They were there and it is impossible to believe they didn't see this fight. Why should they give a deliberately false version? It has been suggested I think that it may be because they are so frightened of Captain Harries but I would ask you to consider this point. Captain Harries in the witness box said that he considered in his private opinion that Njeroge was more responsible than anyone for the death of Mr. White. Knowing Captain Harries' view of the matter and being frightened of Captain Harries, if that were the reason why they altered their story, is it likely that they would give evidence exonerating Njeroge which is what they did? Is it not obvious that if that had been the explanation what they would have done would have been to make the case as black as possible against Njeroge? And if you do consider that the story told by these women is to be accepted then I ask you to advise His Lordship that the correct verdict in this case is one of murder,

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MR. LEAH ADDRESSES THE COURT ON BEHALF  
OF THE FIRST ACCUSED

May it please Your Lordship and assessors, the Crown have stated that there are three facts that have been established for a certainty, the first that White was killed; the second that the second accused and Njeroge were present at the time of the killing; and the third that when Mr. White received the fatal wound he was fighting or grappling with the first accused. Now there is another fact that has not been disputed and that is that Mr. White struck the accused first and again that the blow which Mr. White struck was a severe blow.

Now my learned friend the Crown Counsel has submitted that in his opinion the evidence of the three Wandorobo women is to be preferred to that of Njeroge. He puts forward as a reason for that submission that the witness Njeroge could well have been mixed up in the affair and have taken part in it. Well now I do submit that if that is the case you could only treat the witness Njeroge as an accomplice. One thing is quite certain in Law, that the evidence of an accomplice without corroboration is not to be relied on. If for the purposes of argument you accept that Njeroge was an accomplice what actual eye-witness have you got of the killing? You have three Wandorobo women one of whom I think has admitted couldn't see or didn't see very much, that was the last one to give evidence; and I must reiterate what my learned friend Mr. Saville has said that the remaining two women have on two occasions told stories that are identical with each other but that the story told on the first occasion differs materially from the story told on the second occasion. Now my learned friend for the Crown has said that even though there are discrepancies in

details that is not sufficient reason for dismissing the whole of their evidence. I would quite agree with that statement. However it is not a question of difference in a detail but in a major point. If you could put yourselves in the position of these Wandorobo women what would be the main impression that you would get? Surely your main impression would be that there right in front of you you could see a stab taking place which cut the Swana's wrist. You could not forget that. You would not mix it up with having to look round a corner to see these things happening, nor would you be able to forget the sight of two men running in one direction, turning round and running back again; nor would you forget when you first saw the knife. These women have said that have not talked to each other or to any other people about this affair and that is most obviously untrue. It is inconceivable that both women should change their stories as they have done without talking about the affair. They have had every opportunity of talking while sitting outside here for the last 4 or 5 days and to say that this affair is not the main subject of conversation on Captain Harries' farm is impossible to believe.

The witness Agnes, as everybody seems to agree, is not worthy of credence.

The Accused No.1 in his statement has told you that he had a fight with the Swana arising out of a blow across the face. He has said that in the scuffle the Swana plunged into himself the knife which he was carrying after cutting meat for his dog. It is perfectly true that the Doctor was not cross-examined about that but I do submit that the Doctor's evidence is not inconsistent with a blow of that kind. He said it must have been a blow delivered with force. You all know yourselves that if you get resistance to your hand and

overcome that resistance it is usually easier to start with and suddenly gives, and that would account for the blow being delivered with force behind it.

If you accept the statement of Njeroge and say that he was not an accomplice you have got to remember that Njeroge has said that the whole affair took place very very quickly; that Wakahu's back was towards him; and I put it to you that if a man suddenly sees two people fighting and one of them has a knife it would be very hard for him to say who was actually holding the knife. Njeroge might easily have been mistaken. So that in the first place I would ask you to accept that the accused's story is not beyond all credence. You must remember that if you have any reasonable doubt as to what happened the accused is entitled to the benefit of that doubt. Virtually unless you are so certain that the accused himself delivered the blow as to exclude all other probabilities or possibilities you must say that you do not believe that he killed him. However, if you do believe that the accused struck that blow you have got to remember that Mr. White started that quarrel. Even if you accept the evidence of these Wandarobe women it is quite clear from what they say and from what Njeroge says that Wakahu had received a blow with the open hand across the side of his face. You have got to remember that the Doctor said that he examined Wakahu some 3 or 4 days after this killing and there was still a lump over the accused's jaw. The Doctor himself said that it must have been a severe blow and the Doctor was of the opinion that it was more consistent with a blow with the fist. Well now, a blow as severe as that must have given a great deal of pain. You have got to remember that this blow was delivered in the early morning when it was cold and you yourselves know that

when you are cold you are more inclined to feel a blow than when you are warm. Again if you accept the statement of the Wandorobo women that blow when it was delivered staggered the accused. Now I would submit that the most the Wandorobo women saw was a blow delivered by Mr. White and that they then did the obvious and natural thing, they ran away. In running they may have looked over their shoulders and just got a glimpse of the struggle but they certainly saw no more. One of the women said that their custom was when they saw men fighting they grab their children and run and I put it to you that it is quite untrue this story of peeping round the corner and taking a great interest in the fight until it was finished.

Now if you do accept the fact that Swana White struck the accused and that accused No. 1 actually stabbed the Swana the position is that you will have to decide whether or not the blow which was struck was sufficient to deprive the accused of his self control. Now I submit to you that even if you accept the story of the Wandorobo women that the accused ran away and that Swana White deliberately chased him after having given this blow which not only inflicted pain but probably made the man dizzy I submit that is provocation to make a man lose control of himself. Provocation can only exist provided there was not sufficient time for the killer to regain self-control. Now everybody is agreed including these Wandorobo women that the whole matter was a matter of seconds and it is immaterial whether the accused ran to the butchery and picked up the knife or whether he had it in his pocket. There is not one jot of evidence that this killing was pre-conceived in any way whatsoever. The witness Njeroge had told you that it is quite a common thing for the butchery boys to carry a knife

about with them and you can quite easily picture a man having done something with a knife putting it in his pocket and walking over to the kitchen. I would therefore submit to you that even if you consider that accused No. 1 did in fact kill Mr. White that day he was suffering under very strong provocation. You have heard Captain Harries say that it would not be the first accused's job to do the work in the kitchen on his own account, that he was there merely as an assistant. Apparently from the evidence we have received Wakahu was being blamed for failing to do work that was not his. He was told to bring his kipande and he told the Swana "It is not your business to dismiss me; it is the business of the Swana akubwa". I say he had a certain provocation in words coupled with very strong provocation in deeds.

My Lord, my learned friend the Crown Counsel has referred you to a case in the local Court of Appeal Rex v Frank Mwale. It was an appeal that came, I believe, from Nyasaland and in that case it was accepted by the Court of Appeal that the provocation which was desertion by a wife was in that part of the world and with those particular natives only sufficient provocation for a beating and further if Your Lordship reads that case you will see that the accused stabbed the deceased some 8 or 9 times, and I would submit for Your Lordship's consideration that that is a very different affair to this. This was one blow apparently which is very different to 8 or 9 blows. Again my learned friend has quoted to you the case of the Crown v Lynch and he says that the offence was reduced from murder to manslaughter because there was no evidence that the accused had run to fetch the knife. Now I would submit to Your Lordship that that is not quite correct. In the report which I have before me which is Russell third volume sixth edition

it reads:-

"Unless attention is particularly called to it, it seems to me that evidence of time is very uncertain. The prisoner may have been absent less than five minutes. There is no evidence that he went anywhere for the knife. The father says it was a knife he carried about with him....."

Then the final thing that Lord Tenterden said was:-

"If you think that there was not time and interval sufficient for the passion of a man proved to be of no very strong intellect to cool, and for reason to regain her dominion over his mind, then you will say that the prisoner is guilty only of manslaughter. But if you think that the act was the act of a wicked, malicious, and diabolical mind (which, under the circumstances, I should think you ~~hardly think~~ would), then you will find him guilty of murder."

Now My Lord I do submit here that there is no evidence of that diabolical wicked mind which Lord Tenterden speaks of; that the whole essence of what the Crown says happened is provocation followed by sudden action. Even supposing the man has run to the butchery and picked up the knife I would ask Your Lordship to bear in mind on behalf of the accused that he was being chased and that the provocation was continuing provocation.

I would also refer Your Lordship to the case of the Queen v Smith which is reported in 8 Carrington & Payne at page 160: The head note reads as follows:-

"If a person, being in possession of a deadly weapon, enter into a contest with another, intending at the time to avail himself of it, and in the course of the contest actually use it and

kill the other, it will be murder; but if he did not intend to use it when he began the contest, but used it in the heat of passion, in consequence of an attack made upon him, it will be manslaughter if he use it to protect his own life, or to protect himself from such serious bodily harm as would give him a reasonable apprehension that his life was in immediate danger, having no other means of defence, and no means of escape, and retreating as far as he can, it will be justifiable homicide."

Well my Lord, I do submit that this killing if it was a killing comes within the second part of that; that he entered into a fight with the weapon - I don't say necessarily on him, but very handy, without any intention of using that weapon.

Now on the question of the provocation being sufficient I would refer you to the same volume 8 Carrington & Payne at page 167, the case being the Crown v Hagan (1857):

"If a person be playing music in a public thoroughfare, and thereby collect together a crowd of people, a policeman is justified in desiring him to go on, and in laying his hand upon him, and slightly pushing him, if it be only done to give effect to his remonstrance, and if the person on so small a provocation strike the policeman with a dangerous weapon and kill him, it will be murder; but otherwise, if the policeman give him a blow and knock him down."

I do not suggest for a moment that the accused here was knocked down but I do suggest he was given a severe blow.

Again I would submit that this happened so quickly that there was no question of time for passion to cool at all.

Then at page 777 of English & Empire Digest Vol. 15 Case No. 8314 the Crown v Welsh:

"Then a person has killed another with a deadly weapon, even upon sudden passion, the question as to the sufficiency of provocation to reduce the crime to manslaughter, is not merely whether there was passion in point of fact, but whether there was such provocation as might naturally kindle ungovernable passion in the mind of any ordinary and reasonable man. Such provocation must be something serious - as a blow; and mere words, or gestures, not accompanied with anything of such a serious character, will not, in point of law, be sufficient to reduce the crime to manslaughter."

Well now, I do suggest My Lord that here there was ample provocation. I should not say ample provocation - there is never ample provocation; but I do say that there was sufficient provocation to make a man such as the accused lose his self control. I would also point out to Your Lordship that the methods used by a native in defending or attacking are very different to those used by a European and I submit that Your Lordship will not expect a native to be judged by the same standard as a European. A blow with the fist to a native is entirely unusual - you never see one native hit another native with his fist, he invariably picks up whatever is handy and uses that and I do suggest that that is a point which Your Lordship must take into consideration.

Firstly I would ask Your Lordship to find that there is not sufficient evidence to sustain a conviction of any kind against accused No. 1. Alternatively if Your Lordship is of opinion that there is sufficient



evidence to sustain a conviction that conviction should be one of manslaughter and not of murder.

SUMMING UP

In commencing my Summing up I will mention and will ask you to keep in your minds throughout the summing up possibly the most important principle of Criminal Law, namely, that the onus of proving the guilt of a person accused of a crime is throughout upon the Prosecution. The onus does not at any time shift to the person accused and the Prosecution must prove the guilt of a person accused beyond all reasonable doubt. It is not merely sufficient to create a case of grave suspicion. You have to be satisfied beyond all reasonable doubt in your own minds of the guilt of the person charged.

Now in my summing up, which must of necessity be somewhat lengthy, I shall take you through such portions of the evidence both for the prosecution and for the two accused as are material. I shall not trouble you with that part of the evidence which was formal - formal but at the same time necessary. I shall merely deal with such parts of the evidence as in my opinion are necessary for you to give me a reasoned opinion as to the facts of this case. I shall not direct you as to what you ought to find; I shall content myself with commenting upon certain parts of the evidence leaving you to form your own opinions as to how much credibility you can attach to that evidence.

Now the first piece of evidence of importance is that of Mr. Palfreman. He told you that on examining the ground he noticed various spots of blood in the compound between the butchery and the kitchen and that just inside the butchery door on the floor was a large clot of blood which, if you remember, he scraped up and sent to Mr. Fox the Government Analyst, and it was described by Mr. Fox

as being a clot of human blood. Then the next piece of evidence which has possibly some importance is that of the experiment with Agnes when they did a shouting test and you will remember that Agnes repeated to Mr. Palfreman and repeated correctly what was shouted by Inspector Acton. I shall deal with the likelihood of her seeing what she said she saw when I come to her evidence.

The next evidence is that of Maingi the constable who, amongst other things, told you that he searched the first accused and found a knife.

The next witness to whose evidence I wish to draw your attention is Mr. Pickwell who said in cross-examination by Mr. Loan that he did not see any signs of a struggle on the compound and that there were no signs of earth being scuffed up.

Then there is the corroboration by Njogu of Maingi's story that Maingi took out from the hip pocket of Wakahu a knife.

You will remember that Mr. Fox the Government analyst told you how he examined Wakahu's clothing for human blood and found human blood on the corduroy trousers, the light grey jacket, the pair of shorts and the pink shirt and that there were only spots and not a large quantity of blood. It is more important to consider his evidence with regard to the second accused Koine. Mr. Fox examined this clothing and found human blood on the dark grey shorts on the seat, two spots; but he did not find any other human blood on any of Koine's other garments.

The evidence of Captain Harries is of some importance first of all because he apparently gives Mr. White a good reputation with natives and he said he had

never had complaints from his labourers about Mr. White and he even went so far as to say that Mr. White was the most even-tempered man that he had ever seen. He told you how he found the body about 8 to 10 feet from the kitchen door and he has also told you that both Njeroge and Wakahu used to wear that beret. He has told you that when he examined the spot the ground was hard, there was no grass and no marks of a struggle but there was a faint trail of blood near where the body was lying leading from where the hats were to where the body was lying, and that inside the butchery door on the concrete there was a spot of blood which he described as about the size of a half crown. He proceeded to give you his opinion that it was Mr. White's blood because the piece of meat which was then in the butchery was several days old and he concluded it could not have come from that piece of meat. He further told you that the knife which is an exhibit in this case was not the knife issued to the butchery. He also referred to the fact that the Wandorobo women come first thing in the morning to clean the skins and that they usually do this work on the compound near the kitchen. He next told you that this place called Marashoni is about 12 or 15 miles from the butchery going in a direct line. He has told you also that the butchery was found on the Sunday to be left in a filthy condition from which he deduced that those people responsible for cleaning it had not done their work and that the boys responsible were Njeroge and Wakahu as Njeroge's assistant. In cross-examination by Mr. Saville he stated that No. 2 accused was to have been brought to him by Njeroge to be signed on and that as Njeroge did not bring him Captain Davies didn't think any more about it.

I next refer to the evidence of Dr. Howell who told you that the death of Mr. White was caused by a penetrating wound which passed through the left lung and into the right and left ventricles of the heart; and that the wound passed downwards and inwards and was about 4 1/2 inches deep; that it was probably caused by a knife and would have to be a powerful blow. The wound on the wrist was not actually serious and was fairly superficial. Dr. Howell also told you that the knife exhibited was such as might have inflicted both these wounds. From his evidence it will be quite clear to you that there was only one wound in the region of the chest. And now I come to a part of his evidence which is of importance. Dr. Howell examined the accused Wakaha and found that Wakaha had a swelling over the lower jaw on the right hand side of his face starting at the angle of the jaw forwards for one inch. Dr. Howell said that the wound was not serious and that there was a slight cut on the anterior end of the swelling about a quarter of an inch long; that any form of blow could have caused it, he might have knocked himself against something or received a blow probably with the hand or fist. He went on to tell you that he thought it was possible an open hand might cause it but that it was more likely considering the cut to have been caused by a fist. He also found on the anterior aspect of the left wrist a scratch about an inch long, a superficial scratch and a small abrasion in close relation to it. The lower half of the right forearm was slightly swollen. He said this examination was made on 4th May and that these injuries which he described to you must have happened within the previous three days. In cross-examination by Mr. Lean he stated that any blow which causes a swelling is painful; and

in further cross-examination Dr. Howell said it was a powerful blow if administered with the open hand but not enough to knock a person out, and with regard to the knife Dr. Howell said that if that knife caused the injury it would go in up to the hilt. Another piece of evidence which has some importance is that when Dr. Howell examined the body of Mr. White he found no bruising as if someone had held him down by the lower part of the body; and in re-examination with regard to that same point he said that if a man gripped him round the body he would show no abrasions.

The only part of Kibe's evidence which is in the least material for you to consider is the fact that he said the accused was there prior to these events and in cross-examination by Mr. Lean he said that Njeroge said he had been to Elburgon the day before these events happened; and in reply to cross-examination by Mr. Saville that all the natives on the Harries farm are afraid of Captain Harries.

Then we come to the evidence of Kiputo who told you in cross-examination that he did not see any Wandorobo women about when he was there in the scapound and that if they had been there he would have seen them. He further volunteered the fact that the natives on the farm were afraid of Captain Harries.

I next come to the evidence of Mr. David, who told you that at the butchery he saw in the distance some Wandorobo women and three or four boys; that he saw No. 1 accused in particular. He could not say whether No. 2 was there or not as he had seen very little of him but the Wandorobo women were by the kitchen on the bank.

Sunguru told you that he saw there two Wandorobo women just by the scapound and he identified two of them Beliani and Nesioku when they were brought into Court.

He stated that they were warming themselves at the fire in the kitchen.

COURT ADJOURNED AT 12.50 AND RESUMED

AT 2.15 P.M.

SUMMING UP (Continued)

And now I come to the more important part of the evidence, namely, the evidence of the three eye-witnesses, the Sandorobe women, and here it is my duty to point out to you that the evidence given before this Court differs in material facts from the evidence which they gave before the lower Court. It does not follow that because their evidence is different from what they said in the lower court in certain details you need reject the whole of their evidence, but it does mean that it is your duty to scrutinize their evidence very closely. Now in the lower court Beliani said this: "The accused (that is No.1) ran off into the butchery and Mr. White followed him at a run. Wakaha turned round just inside the doorway and I saw him with a knife in his hand. Mr. White tried to ward off the blow and got a cut on the left wrist. Then they grappled with each other and the other two then came out of the kitchen". Now that incident is described by Beliani in this Court in this way: "The accused No.1 ran into the building (that is the kitchen) Swana followed him there too. After the accused was slapped by the Swana he ran to the kitchen the Swana following the accused. They went round inside the kitchen and we noticed the Swana bleeding by his wrist. They were inside the kitchen and we were peeping. He got the cut on the wrist near the door of the kitchen. We saw them wrestling near the door of the kitchen. We saw a knife."

Now that is a different story and the fact that Beliani has told a different story now must, as I have already told you, lead you to ask yourselves whether you can believe the whole of the story that she has told or any part of it. Why she now comes to this Court and gives this somewhat different account is neither here nor there and you need not bother yourselves with the reason for that. It may be due to loss of memory; it may be that they have discussed the matter and agreed upon a somewhat different version, but I am bound to tell you that because there is this variation you are not bound to reject the whole of the story.

Now the second of these women, Kinanyisho, has done the same thing and, as learned Counsel have pointed out to you, varied her story in the same way as Beliani has done and what I have said about Beliani's evidence equally applies to Kinanyisho's.

There are other passages in Beliani's evidence to which I must draw your attention. She says that she was there with the other two and that all three were sitting on the bank beside the kitchen, and you have to consider whether in fact they were. There is corroboration of the fact that they were there in Mr. David's evidence and in fact Njeroge for the Defence has said that they were there. It has to be decided upon the evidence whether they were in fact there and saw what they say they saw. Beliani gave an account of the discussion about failure to do the work which more or less coincides with and is corroborated by other evidence. There does not appear to be much dispute that Bwana White was angry with Wakahu and called for his registration certificate. There does not seem to be much doubt either that the Bwana slapped Wakahu, and the slaps which you have seen demonstrated would indicate a fairly smart slap with the flat of the hand. Beliani



goes on to say that the second accused and Njeraga came out from the kitchen "We saw No. 2 accused come behind the Bwana and hold him round the waist and he then held him lower down by the legs. We noticed that Wakahu was stabbing deceased in the chest. At the time No.1 stabbed the second accused was holding the deceased by the knees. He had previously held him by the hips. When they were wrestling we could see the thrust by the hand of Mr. White but couldn't see properly. He was thrusting at the short one No.2 and we ran away. The struggle was very short". And again: "First of all Wakahu ran into the kitchen and after he had cut Bwana on the wrist they struggled outside. He ran into the kitchen after he was slapped and let the horse go. He had nothing in his hand after he was slapped. Afterwards he had a knife. After he had gone inside the kitchen where the food is cooked". Then follows what I think is a somewhat significant fact. Beliani then appeared to remember that No.2 accused had attempted to strike Mr. White with this piece of firewood and she did not mention that fact about the firewood until, I won't say she had to be reminded by the Counsel for the Crown, but it appeared to have been at the best something which she paid little attention to whereas in her evidence before the lower court she put this attempt to hit Mr. White with the firewood in what, if it happened, was the sequence. It does not follow from the fact that this came out about the firewood before this Court somewhat late in the examination in chief that it did not necessarily happen at all, but one would, I think, have expected her to give that evidence in its proper sequence. The description of the firewood incident came at the end of her evidence in chief and was as follows:-

"Yes we saw the accused No.2 come with a piece of wood and try to strike the Bwana with it. He

didn't strike the Bwana because Njoroge took this stick away. It was when Wakahu and Bwana were struggling, when the firewood was taken away from him No.3 came from behind and held Bwana Jack by the waist."

and in cross-examination by Mr. Loan this same witness Beliani said "we did not go into the kitchen to warn ourselves" whereas there is evidence from one of the witnesses for the Prosecution that they were warning themselves in front of the fire in the kitchen. She again described the blow on the face as a hard blow because Wakahu staggered like a person going to fall. She said she did not see the knife in Wakahu's hand at the butchery and if you remember she was then referred to the statement she made before the Magistrate in the lower court which was at variance with what I have read out to you and she said "I said he ran to the lower building and I did not see the knife until he came to the other building. I don't know where the knife was got from". She later said in cross-examination by Mr. Saville that Bwana Jack chased the accused to the butchery after he had smacked him on the face.

I need not, I think, go through the evidence of Kimanyisho. It is sufficient to repeat that her evidence has varied as Beliani's has, and from that evidence you may have some doubt as to where accused No.1 got the knife and as to whether in fact they saw Wakahu with the knife outside the butchery door. They also of course go on to say that they saw the stabbing and it is possible for you to accept that story that they saw the stabbing while rejecting their evidence that they saw the knife in Wakahu's hand at the butchery door. It is equally important for you, if not more important, to look carefully at their evidence with

regard to the firewood and you may think it remarkable that they did leave their account of that attempted assault with the firewood until the last thing in their examination in chief. Learned Counsel are not permitted to lead a witness and the better practice is to allow a witness to tell his story in his own words and in his own way and it is, I think, a little significant that the account of the firewood was not mentioned in examination in chief in the order in which one would have expected it to have been mentioned. In this connection as has been rightly pointed out by Mr. Saville that piece of firewood was never discovered even though Mr. Harris made what appears to be a careful examination of the scene within a short time after the homicide.

Now I come to the third witness woman, and here again I must in the interests of the accused warn you that her evidence must be scrutinised carefully because she herself admits she cannot see properly and as far as her evidence is concerned you may come to the conclusion that she did not attempt to describe more than she had in fact seen. She told you how the Buana struck No. 1 accused. "When the Kikuyu ran into the building he picked up a knife which he fought with". Now that I think was a piece of evidence which was not given in the lower Court but it does not follow from that that she did not see what I have just read out to you. She may have omitted to tell the Magistrate in the lower court that fact. She apparently didn't know which building they ran into. She described to you that there were three Kikuyus two were fighting and one separating. They were fighting with Beam Jack. "I did not see properly", and in answer to Mr. Lean she said "I could not see the knife when they were struggling and I did not see the knife at the butchery door. I presume No. 1 picked up a knife

from there and came and fought with it" and if you remember Mr. Lean asked that her deposition before the lower Court "I couldn't see much because of my eyesight being poor" should be put in in evidence in this case because she denied that she had said that to the Magistrate.

Now I come to the evidence of the last woman, Agnes. He has said that the Wandorobe women were there; that the Swana struck Wakahu "and I saw No. 2 accused come out from the kitchen with a piece of wood and try to strike Swana Jack and Hjeroge took it away from him and when they were struggling No. 2 came out immediately and tried to strike Swana" and if you remember she said she heard the remark of the Swana "where were you yesterday?". That was what she said before this Court whereas in the lower Court she said "He Swana Jack spoke to Wakahu but I couldn't hear what he said" and in cross-examination she said that she saw very little of what happened. Now it is entirely a matter for you how much of her evidence you believe. You have been to the spot and you have had Agnes' hut pointed out to you and it is for you to make up your minds whether a person standing about 54 feet to the right of that hut could see the things she has described. As I have said the fact that there are discrepancies in their evidence does not mean that you are obliged to reject their evidence in toto.

The next witness whose evidence I desire to draw your attention to is Nyakosi who said that she saw two Vikuyus running away on the morning that Swana hit was killed and identified the two who were running away as these two in the dock.

The next witness is Taya who said he saw the three Wandorobe women leaving their home in the morning to go to the Sokoni and then he said that he afterwards saw one

woman running out from near the piggeries.

The next witness is Gicholi who has told you how these two accused, one of whom is his son-in-law, arrived about 1 o'clock on a certain day and when they arrived No.2 accused was not agitated and that he goes there on account of his wife who lives at Gicholi's house.

That was the evidence for the prosecution and it is for you to assess that evidence at its proper value.

Wakahu's statement from the dock was a lengthy one giving you a very detailed account of what he did the day before Mr. White was killed and of the work which he had done and I had better read to you his account of how Mr. White came to be killed:

"Bwana grumbled much in the kitchen and I saw him pick up a knife from the kitchen. He was going to cut some meat in the butchery for his dog. He came to where I was. He asked me 'did you give instructions for the ham to be boiled'. I replied 'Yes I did'. He replied 'You did not'. I told him that I had told Njeroge but Njeroge replied to me that there was no fuel. Bwana then struck me. I told him not to beat me for nothing because I had not done anything wrong. I told him 'You found me working and yesterday you also found me still working. If you think I have done wrong you had better let me go'. He abused me again. I told him 'I am going to report you to Mr. Harries for striking me for no reason'. When I said that he made a stab at me with the knife which he was holding. When I noticed he was going to stab me I went to ward off with my left hand. My coat sleeve was pierced. It went through and cut me on the left wrist. When the Bwana made to stab me I caught his wrist like this. Then the horse started

to pull me away on account of the trouble. He said 'If you let go the horse it is bad'. So he pulled his hand forcibly towards himself and by the force I hit Buana on the chest with my head and then the Buana with his own hand stabbed himself. That is when he forcibly pulled his hand away. By that time the horse had bolted. When I noticed he had stabbed himself I ran away as far as the door. I heard him saying 'who is going to call Buana Harries?' When I heard Mr. Harries' name mentioned I said 'this is going to be bad on my part, knowing his temper'. I thought if I wait there he will come and assault me and tie my leg with a rope like he had done to another man a few days before."

and later he said that Koine overlooked him before he reached Buana Sasaki's store. Now there is his statement, and it is for you to say how much credibility you attach to it. You have got to ask yourselves whether such an action or manoeuvre, as the learned Attorney General described it yesterday, could result in that fatal wound in the heart, a blow which caused the knife to go in some 4 1/2 inches. There is no evidence before this Court that the knife which accused No.1 says Buana White used has ever been found. There is no evidence before this Court apart from the accused's own statement that at that time when this fatality happened Buana White had a knife in his hand. You must assess that statement at its proper value.

Now I come to the evidence of the second accused. He has told you that he was at the farm on that day and went with Sjeroge at 6 o'clock in the morning to Mr. Harries' place; that the Buana was grumbling; that the Buana struck the first accused with his open hand on the

check. Then he says:-

"I then saw Swana on the ground. I was continuing my work and I didn't turn round on account of the noise. I saw Swana falling and asking 'who is going to call the big Swana?'. At that time I didn't know Swana had been stabbed. When I saw the Swana falling Wakahu was not near. Wakahu was then as far away as corner of building at right angles to this Court"

"Njeroge went to call the Swana akubwa and I was left there. I said to myself 'If I am found here I shall be accused of stabbing the Swana, it is better for me to run away'. I ran away because there was no one else there"

No.2 accused has denied that he attacked the Swana with a stick. He has denied that he grappled with Mr. White or held him round the legs. He has said that the wendrobo women were not there. Later he said that he didn't see much of what happened because the tank concealed the Swana and Wakahu but he says he sat on the chicken mound where the feathers were and you have seen that spot and you may come to the conclusion that he should have seen everything that happened. He saw Swana White slap the accused No.1 and then in cross-examination by the learned Attorney General he says:-

"I admit he (Swana White) was stabbed by that man (Accused No.1). I believe he was stabbed by him because I saw him fall. Yes I admit he was stabbed by that man"

and he has varied the account given by most, if not all, of the other eye-witnesses by saying that Mr. White gave No.1 accused three slaps. In other words the evidence of No.2 accused is a total denial of having taken any part in this affray although he does admit that No.1 accused

was the person who stabbed the Bwana. It is for you to say whether the manner in which No.2 accused gave his evidence impressed you. He went on to say that Wakahu had a knife. "I don't know where he got it. I did not see him run to the kitchen or to the butchery. The knives are kept in the butchery and he might have taken it in the morning", and he identified the knife which was an Exhibit in this case as the knife with which No.1 accused stabbed Bwana White. He said he was certain. As to No.1 accused's statement of the manner in which Mr. White was killed No.2 accused says:

"I saw them leaning but I didn't see Wakahu's head striking Bwana Jack's chest.

Later that morning I had no firewood. Njeroge never took a piece of firewood away from me"

and he described to you how when they were far away from the scene No.1 accused said "I didn't stab him much" meaning that he only gave him a slight stab. In cross-examination by Mr. Loan No.2 accused said "I heard no mention by Wakahu that he was going to hurt Mr. White". Here perhaps it would be best to refer to the two spots of blood which were found on the seat of the shorts of No.2 accused. You have heard from Mr. Fox that he decided they were spots of human blood; but on the other hand, as Mr. Saville has said, if in fact he did grip Mr. White round the middle and later round the legs as has been described we might have expected possibly to have found more blood and rather on the front of his garments than on the back.

Now I come to the last witness in this case, that is Njeroge. He has told you that he heard the noise of a blow and that he rushed out immediately and as he got out he saw Wakahu and the Bwana holding one another and he



demonstrated to you how they were holding each other and also how Wakahu was holding the knife in his hand. He said that it lasted a very short time "When I said 'stop stop' he had stabbed him" and in answer to the question how long elapsed between the first blow and the stabbing Njeroge replied "As long as it would take to rush across this Court". He said he caught Wakahu round the shoulder and the Swana said "Let him go. He has killed me" and told him to go and call Captain Harries. As to No.2 accused Njeroge says he never took firewood from No.2 accused or saw him grapple with Mr. White or Wakahu. The witness recognized the knife exhibited. He said it was usually kept on the table in the butchery and that it was the knife with which Wakahu stabbed the Swana. He also corroborates the story that there was this conversation about the work, and the order given to No.1 accused to produce his registration certificate. He told you that he was attending to the fire and he didn't turn round during this conversation because he was blowing the fire and making it. He said he saw the three Wandorobo women there that morning and that they were still there when the fight took place and were in a position to see what happened.

Now these are the material parts of the evidence taken out of the whole record and it is for you to make up your minds what evidence you can accept and what evidence you cannot accept and from that evidence you will have to reconstruct the scene in order to give me your opinions as to what happened. As far as No. 1 accused is concerned you have got evidence that he stabbed Mr. White, evidence given by the Crown and evidence given by the second accused and his witness.

Against that evidence is his statement that Mr. White killed himself. It is for you to say which version you will accept. Although in his own statement Wakahu does not admit that he struck Jack White with the knife nevertheless by the rules of Criminal Procedure it is my duty to put the question of provocation before you, if there is any evidence at all of provocation. Now there is evidence here of provocation but that provocation if it is to be sufficient to reduce the crime from murder to manslaughter must conform to the Statutory definition of provocation and in that connection it is my duty to put before you the two relevant clauses of the Penal Code of this Colony, sections 191 and 192. Section 191 reads as follows:-

"When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation as hereinafter defined, and before there is time for his passion to cool, he is guilty of manslaughter only."

Now I am assuming for the moment that you find accused No.1 has killed Mr. White and I will also assume for the purpose of trying to define the section to you that that killing took place in the heat of passion, none the less before it can become reduced to the crime of manslaughter the provocation must be as defined by the following section; not any sort of provocation, not a little provocation, but it must conform to the definition of provocation which I am about to read to you and unless you can bring that provocation within the four corners of that definition the crime is not reduced to that of manslaughter; and to this I want you to pay particular attention because I shall pay particular attention to

your opinions and I shall want each of you to give me your individual opinion as to whether there is in this case, if you get as far as that point, that provocation which is defined in the Penal Code:

The term 'provocation' means and includes any wrongful act or insult of such a nature as to be likely when done to an ordinary person to deprive him of the power of self-control and to induce him to assault the person by whom the act or insult is done or offered."

Now in deciding this important question if, as I say, you come to decide it, you have not to ask yourselves whether this accused Wakahu was deprived of his self-control - you may think indeed that he was deprived of his self-control, but that is not enough. It has to be the case not of Wakahu but of the ordinary man, and by that is meant in this case the ordinary native. Before therefore you can arrive at a decision that the provocation is sufficient to reduce the crime from murder to manslaughter you must of necessity find that any other ordinary native would have acted as Wakahu did and that any ordinary native when slapped sharply on the face would so lose control of himself or be deprived of control of himself. Therefore I hope you see the important question to which you have got to address your minds and I repeat it shortly so that you may know exactly the question you have got to ask yourselves; not whether Wakahu was deprived of the power of self control but whether, given the same facts and the same circumstances, the ordinary native would have been deprived of the power of self control.

As to the question of self defence, that defence has not been raised and if it had been raised it would still be my duty to tell you that there is no evidence

that Wakahu was defending himself and defending his life.

The section which deals with that I had possibly better read to you, section 18 of the Penal Code:-

"An act or omission which would otherwise be an offence shall be excused if the person accused can show that it was done or omitted to be done only in order to avoid consequences which could not otherwise be avoided, and which if they had followed would have inflicted upon him or upon others whom he was bound to protect inevitable and irreparable evil, that no more was done than was reasonably necessary for that purpose, and that the evil inflicted by it was not disproportionate to the evil avoided."

Now nobody would suggest for one moment that a slap on the face results in inevitable and irreparable evil. Therefore there is no question here in this case of self defence.

Do not think that I can usefully add anything further with regard to accused No.1 and I shall deal now with accused No.2 as shortly as I can consistent with my duty. The section which is relevant is section 32 of the Penal Code which reads:-

"When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence."

Now the prosecution say that No.2 accused assisted in the murder of Jack Hite and if you were able to come to this conclusion; that No.1 accused had a knife in his

hand and was struggling with the deceased and No. 2 accused came on the scene and, seeing that knife in No. 1 accused's hand, joined in the struggle and held the deceased round the middle and later by the legs - if you were to find those facts proved beyond all reasonable doubt you could not find anything but a verdict of guilty of murder against No. 2 accused. If on the other hand you were to find that No. 2 did not take any part in the fight at all or attempt to assist No. 1 accused, or that he did attempt to assist No. 1 accused without the slightest knowledge that No. 1 accused had a knife in his hand; without anything indicating to No. 2 accused that No. 1 intended to cause death or at least grievous bodily harm, you would not, I think, be entitled to return a verdict of guilty of murder against No. 2. It is for you on the evidence to say whether No. 2 accused joined in the fight. It is for you to say whether, if he did join in the fight, he joined in with the intention of causing grievous harm or death to the deceased.

I have dealt with the evidence and I do not propose to comment any more upon it. It is possibly an extraordinary thing for an innocent man to have run away as No. 2 accused did but the mere fact that he did run away and indeed joined up with No. 1 accused does not of necessity mean that he is guilty of murder. It is not an action altogether of an innocent man but on the other hand it is not of necessity the action of a guilty man.

I have finished. It is for you now to say whether either or both of these accused Aksha and Poine are guilty of the charge of murder which has been preferred against them by the Crown; and I close my summing up with the words with which I opened it. If you have any reasonable doubt about the guilt of either or both of these two accused that accused is entitled to the benefit

of that doubt and to be acquitted. If you have no reasonable doubt about the guilt of either or both of the accused it is your duty, regardless of what consequences may ensue to either or both, to return an opinion of guilty.

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OPINIONS OF ADVERSORS

Hillman Karioki.

A person who is held by another by the wrist if he is being beaten by him he will do his utmost to defend himself. He will use anything available, if he has a stick or a knife or even teeth. He will try to get away from the hold of the other man. Even if he has no fear of his life he might do an action which he will not think will kill the other man. I think accused stabbed the deceased because he anticipated he was going to receive serious injuries and I don't think he intended to seriously injure the other man. I find No.1 stabbed deceased on account of that.

The second accused did not take part in the fight. He would not have dared to interfere because he knew he might be beaten like the other man. That is why he didn't interfere.

Stephen Karioki.

If a person receives a blow if he has a weapon at hand he will use it. He does that because of the pain he feels. I find Wakahu had a knife with him and after he was struck smarting from the pain he received he stabbed the deceased but he was deprived of his self control through pain.

I find Not Guilty the second accused because there is no evidence against him whether he was near the fight. The reason he ran away was because when Bwana arrived he would receive a sever beating from him.

Isaiah Mwaniki.

If a lion is wounded in the arm the man who has shot it will not go close to it. I find accused stabbed

deceased, but he did not do it intentionally. It was because he received a blow and he continued near him. If deceased struck the accused and went away accused would not have followed him. There would have been no further fight. We have three stories. When the Police Officer arrived he could not obtain piece of fuel nor Captain Harries. I have heard evidence from Njeroge. Njeroge tells us where he had left second accused was the same place he next saw him. I believe him when he says Koine did not take part. There is no reason why he should not have told us if he had taken part. Accused No. 2 did not take part.

The Doctor tells us that deceased had only one wound; he tells us he saw no marks left where second accused would have held him. With regard to the human blood found on the seat of the trousers, people working in the slaughter house might cut their finger and wipe it off on their seat. We have not been told how old was the blood and the Doctor is not able to tell us if the first accused had blood on him whether he could have touched second accused with the blood when they slept together. He is only foolish in going together with first accused after first accused had killed deceased. That is all.

HIS HONOUR: (To Assessors): I have listened to your opinions and not one of you has seen fit to answer the question which I spent at least five minutes trying to explain to you, that is, the question of provocation and whether this provocation was such as would have deprived the ordinary native of his self control.

Hillean Kariki: Any native if he received a severe blow would be deprived of his self control.



Stephen Kariuki:

Yes anyone who is struck a violent blow and especially if he is not stronger than the other man, would be deprived of his self control.

Isaiah Mwaniki:

I agree with Stephen's opinion.

COURT ADJOURNED UNTIL 11 A.M. ON

SATURDAY, 20TH JULY, 1958.

FOR JUDGMENT

SATURDAY EOTH JULY, 1938.

COURT RESUMED 11 A.M.J U D G M E N T.

The evidence discloses that the two accused Wakahu and Koine were employed by Mr. Harries on his farm in the butchery and that on Monday May 2nd the deceased John White who was Harries' Manager came to the butchery at about half past seven in the morning when the two accused were there, Wakahu holding the deceased's horse in the space between the butchery and the kitchen and Koine in or about the kitchen, about to pluck some fowls.

It appears that the deceased was annoyed at the fact that those responsible for working in the butchery had not been present at their work on the two previous days Saturday and Sunday and amongst those responsible for that work was Wakahu who worked as assistant under one Njeroge. While Wakahu was holding the deceased's horse the deceased complained to Wakahu that his work had not been done and demanded to know where those who were responsible for the work had been on the two previous days; further that the deceased told Wakahu to bring his kipande in order to be signed off. Wakahu objected to this demand and replied that the deceased was just as much an employee of the employer Harries as he Wakahu was himself and that he would only produce the kipande if he were ordered to do so by his employer Harries. Upon that it is clear from all the evidence that the deceased struck Wakahu on the face with the open palm of his hand. This blow has been demonstrated by witnesses for the prosecution to have been a sharp blow or a hard blow and to have caused Wakahu to stagger. Wakahu was examined within a day or so after

the event by Dr. Haysell who testified that Wakahu upon examination had a swelling over the lower jaw on the right hand side starting at the angle of the jaw and going forwards for one inch and that this was caused probably with the hand or fist and that it was possible an open hand might have caused it but it was more likely, considering the small cut which was present, to have been caused by the fist. Further that the blow would have been a painful one and that if the blow were administered with the open hand it must have been a powerful blow but not enough to knock out the accused. What happened immediately the accused Wakahu received this blow is not clear. The accused himself states that he the accused made some further temperate remarks to the deceased and that the latter made a stab at Wakahu with a knife. The evidence, however, for the Prosecution would suggest that Wakahu immediately rushed to the butchery door which was some few yards away, went inside the door, followed by the deceased; that he Wakahu then rushed back followed by the deceased across the open space between the butchery and the kitchen and either went into the kitchen or stopped at the threshold of the kitchen. In any event, however, it is clear that immediately that had happened the two grappled each other at a distance of some 12 to 15 feet from the kitchen door and that during the struggle or grappling which appears to have lasted only a few seconds the accused Wakahu stabbed the deceased in the left hand side of the chest with the knife which has been produced. The deceased died almost immediately having received a fatal wound in the heart.

I am unable to accept the statement of Wakahu, as also the assessors are unable to accept it, that the deceased had a knife or stabbed at Wakahu with it or

plunged his own knife into his own chest. There is not the slightest evidence except accused's own statement that the deceased had a knife on him during the struggle. The evidence is overwhelming that it was Wakahu who stabbed the deceased.

As to the part which the Prosecution allege No. 2 Accused took during the struggle the evidence is not clear. The three Wandorobe women called as witnesses for the Crown in the lower court stated that they saw a knife in the hand of Wakahu at the moment when he emerged from the butchery door, whereas in their evidence before this Court they testified that it was not until Wakahu emerged from the kitchen door that they saw blood upon the wrist of the deceased and they did not say in this Court that they saw the knife in Wakahu's hand at the moment he emerged from the butchery door. The importance of this discrepancy as well as affecting the view which one must take of Wakahu's actions affects the view that one must take of the part which Koine played in the struggle if in fact he took any part in it. The Crown witnesses the three Wandorobe women and Agnes stated that immediately after Wakahu and the deceased had commenced struggling in the open space Koine the second accused came out of the kitchen and joined in the struggle holding the deceased round the body, first by the hips and then lower down, and that it was while he was so doing that Wakahu was able to plunge the knife into the chest of the deceased. The accused Koine and his witness Jjeroge, who was in the kitchen and was aroused by the noise of the quarrel, have testified that Koine took no part in the struggle and that he remained just outside the kitchen door where the heels were plucked. If it were manifestly clear that Koine joined in the struggle and if it were manifestly clear that he

hold the deceased as was alleged and that he saw the knife in the hand of Wakahu it would, I think, be clear that he would be guilty of assisting Wakahu in his act, but in my judgment, having regard to the different story now told by the three Sandorobo women to what they stated in the lower Court, which discrepancies I have dealt with fully in my summing up, and in view of the grave importance of any evidence which goes to show what happened during those critical moments, it would be unsafe to hold that it has been proved beyond reasonable doubt that Koine did in fact take part in the struggle or did in fact know that Wakahu intended to stab the deceased with a knife. I accept the fact that the Sandorobo women were present and there is undoubtedly a grave suspicion that he was concerned but there is not that sufficient or cogent evidence which would justify the Court in coming to the conclusion that there is no reasonable doubt about the part which Koine is alleged to have played. I am unable to accept her as a reliable witness on account of the great distance she was from the scene and certain inconsistencies in her evidence. Moreover it is significant that Beliani and Kimanyisho waited until the end of their evidence to mention the fact that Koine attempted to strike the deceased with the piece of firewood.

It would appear that the deceased was not able to proceed more than a few yards and that he then sank to the floor and died and that the two accused immediately ran off. They appear to have journeyed together after meeting each other some distance from the farm and to have gone together to the house of K. Lee's father-in-law some 12 to 15 miles distant near which they were later arrested.

The facts established, therefore, are that Makahu stabbed the deceased with a knife which he either picked up inside the butchery door or which he had on him before the altercation arose. The deceased was killed with what has been described as a powerful blow, and the question therefore arises - the most important question - as to whether there was sufficient provocation given by the deceased hit which would have the effect of reducing the crime from murder to manslaughter. The blow received by Makahu was, as Dr. Howell has said, probably a painful blow and a blow which caused a swelling on the side of the face, and before this Court can hold that the crime is one of manslaughter and not murder it must on the evidence be satisfied that the blow received by Makahu was such as would deprive the ordinary person of his power of self control and by that it is understood that the ordinary person means in this case the ordinary native. The three Assessors have each stated that in their opinion the blow received was such as would be likely to deprive the ordinary native of his power of self control. Several authorities have been quoted to this Court by the Crown and by Mr. Lean on behalf of the accused Makahu and there are several others that are of assistance in enabling this Court to arrive at a just decision. These authorities are as follows:-

The King against May: *ibid.* reported in the Law Reports of the Court of Appeal for Eastern Africa, 1936, Vol. III at page 106. The facts of that case are that the appellant at a drinking party possessed himself of the deceased's knife against the wish of the latter; while he was holding it by the blade the deceased caught it by his handle and pulled it away cutting the appellant's hand. Thereupon the appellant speared the deceased. It was held that, judging the appellant

according to the class of society to which he belonged, the provocation might be regarded in the circumstances as sufficiently grave to reduce the crime to manslaughter.

The next case is The King against Brown reported in Leach page 167 and mentioned in Rex v Makanga bin Swikaro, reported in Law Reports of the Court of Appeal for Eastern Africa Volume IV Part II, 1937, as follows:-

"One of the most common cases of voluntary manslaughter is that of its being committed in the anger provoked by a sudden combat. Thus if, upon a quarrel which was not premeditated on the part of the prisoner, persons fall to fighting and then in the heat of the moment either of them (for the combat affords matter of provocation to each) inflicts some fatal injury upon the other, the slayer will not be guilty of more than manslaughter"

and the Court which consisted of the Chief Justice of Tanganyika, the Chief Justice of Zanzibar and Mr. Justice Wilson held that the law as laid down was unexceptionable and they considered it was properly applicable to the facts in that case.

The next case is The Queen against Mark Herwood reported in English Reports Volume 174 at page 956, in which Chief Baron Collock in summing up said:-

"It is true that no provocation by words only will reduce the crime of murder to that of manslaughter but it is equally true that every provocation by blows will not have this effect, particularly when, as in this case, the prisoner appears to have resented the blow by using a weapon calculated to cause death. Still, however, if there be a provocation by blows which would not of itself render the killing manslaughter, but it

be accompanied by such provocation by means of words and gestures as would be calculated to produce a degree of exasperation equal to that which would be produced by a violent blow, I am not prepared to say that the law will not regard these circumstances as reducing the crime to that of manslaughter only."

The next case is The Queen against William Smith reported in English Reports Volume 176 at page 910, of which the head note reads:-

"An assault, too slight in itself to be sufficient provocation to reduce murder to manslaughter, may become sufficient for that purpose, when coupled with words of great insult"

I am not saying that there is any evidence in this case of words of great insult used by the deceased White.

In his Judgment Mr. Justice Hyls said:-

"An assault which in itself would be very slight, may become extremely serious by reason of the circumstances with which it is connected"

and in his summing up to the Jury he said:-

"If you consider that under all the circumstances the assault was a serious one, the offence will be manslaughter."

The next case is The King against William Snow reported in English Reports Volume 168 at page 178, in which the head note says:-

"If on any sudden quarrel, blows pass, without any intention to kill or injure another materially, and in the course of the scuffle, after the parties are heated by the contest, one kill the other with a deadly weapon, it is only manslaughter"

The next case is The King against Daniel Lynch reported in English Reports Volume 178 at page 985; the



head note of which reads:-

"It is not every slight provocation, even by a blow, which will, when the party receiving it strikes with a deadly weapon and death ensues, reduce the crime from murder to manslaughter."

and Lord Tenterden in his summing up said as follows:-

"It is not every slight provocation, even by a blow, which will, when the party receiving it strikes with a deadly weapon, reduce the crime from murder to manslaughter. But it depends upon the time elapsing between the blow and the injury; and also, whether the injury was inflicted with an instrument at the moment in the possession of the party, or whether he went to fetch it from another place. It is uncertain, in this case, how long the prisoner was absent. The witness says from five to ten minutes, according to the best of his knowledge. Unless attention is particularly called to it, it seems to me that evidence of time is very uncertain. The prisoner may have been absent less than five minutes. There is no evidence that he went anywhere for the knife. The father says it was a knife he carried about with him, it was a common knife, such as a man in the prisoner's situation in life might have; for aught that appears, he might have gone a little way from the deceased and then returned, still smarting under the blow he had received. You will also take into consideration the previous habits and connection of the deceased and the prisoner with respect to each other. If there had been any old grudge between them, then the crime which the prisoner committed might be murder. But it seems they had been long in habits of intimacy, and on the very night in question, about an hour

before the blow, they had been drinking in a friendly way together. If you think that there was not time and interval sufficient for the passion of a man proved to be of no very strong intellect to cool, and for reason to regain her dominion over his mind, then you will say that the prisoner is guilty only of manslaughter. But if you think that the act was the act of a wicked, malicious and diabolical mind (which, under the circumstances, I should think you hardly would), then you will find him guilty of murder. "

The next case is *The King against George Hayward* reported in *English Reports Volume 173* at page 1188. The head note in that case says:-

"In a case of death by stabbing, if the jury are of opinion that the wound was given by the prisoner while smarting under a provocation so recent and so strong, that the prisoner might be considered as not being at the moment the master of his own understanding, the offence will be manslaughter; but if there had been, after the provocation, sufficient time for the blood to cool, and for reason to resume its seat before the mortal wound was given, the offence will amount to murder; and if the prisoner displayed thought, contrivance, and design, in the mode of possessing himself of the weapon, and again replacing it immediately after the blow was struck, such exercise of contrivance and design denotes rather the presence of judgment and reason than of violent and ungovernable passion."

The next case is *The King against Abdulla Hussein alias Abdi* which is an unreported case No. 52 of 1829 of this colony tried by Mr. Acting Justice O'Connell, and in his

Judgment Mr. Justice Green said:-

"Two of the witnesses for the Crown say that the deceased came out of the back of the house and beckoned the accused who came to him and stood in front of him, and after they had spoken a few words to each other the deceased again struck the accused, this time across the eyes with the back of his hand and caught him by the coat collar whereupon the accused drew his knife and stabbed the deceased. This evidence is uncontradicted and in my opinion it therefore necessarily brings the case within Section 304 of the Indian Penal Code which is culpable homicide not amounting to murder as the witnesses swear that the act of stabbing by the accused was done on sudden and grave provocation. But one of the witnesses says that the accused could have got away from the grip of the deceased without having recourse to his knife. Of this fact I have no doubt, and I have to say that the accused committed a most serious offence in using his knife on an unarmed man, and for that offence I consider that he ought to receive the maximum punishment prescribed by law, as on the evidence the accused must have known that he was causing such bodily injury as was likely to cause death. find the accused guilty of culpable homicide not amounting to murder and I sentence him to 10 years imprisonment

The next case is The King v Thomas reported in English and Empire Digest Volume 15 at page 777, in which it is stated:-

"If a person receives a blow, and immediately avenges it with any instrument that he may happen to have in his hand, <sup>and death ensues</sup> then the offence will be only manslaughter, provided the blow is to be attributed

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to the passion of anger arising from the previous provocation. The law requires two things, first, that there should be the provocation, and secondly, that the fatal blow should be clearly traced to the passion arising from that provocation."

The next case is The Queen against Smith reported in English Reports Volume 173 at page 441 in which it is stated:-

"If a person, being in possession of a deadly weapon, enter into a contest with another, intending at the time to avail himself of it, and in the course of the contest actually use it and kill the other, it will be murder; but if he did not intend to use it when he began the contest, but used it in the heat of passion, in consequence of an attack made upon him, it will be manslaughter."

The next case is The Queen against Hagan reported at page 445 of the same volume in which it is stated:-

"If a person be playing music in a public thoroughfare, and thereby collect together a crowd of people, a policeman is justified in desiring him to go on, and in laying his hand upon him, and slightly pushing him, if it be only done to give effect to his remonstrance; and if the person on so small a provocation strikes the policeman with a dangerous weapon and kill him, it will be murder; but otherwise if the policeman give him a blow and knock him down"

The last case is The King v Welsh reported in Volume 15 English and Empire Digest at page 777, in which it is stated:-

"That where a person has killed another with a deadly weapon even upon sudden passion the question as to the sufficiency of the provocation to reduce

the crime from murder to manslaughter is not merely whether there was provocation in point of fact-but whether there was such provocation as might naturally kindle ungovernable passion in the mind of any ordinary and reasonable man. Such provocation must be something serious such as a blow."

After perusal and a careful study of these reports it would appear that the blow on the face of the accused Wakahu was provocation within the meaning of Sections 191 and 192 of the Penal Code. The Crown through Mr. Phillips in his final address stated that on the most favourable construction of the facts to the accused the case is a borderline case. It is very near the line indeed and it is not without very considerable hesitation and after much careful thought that I am able to hold that the provocation received by Wakahu is sufficient to reduce his offence from murder to manslaughter. The fact that Wakahu used a deadly weapon and plunged it into the heart of the deceased makes this a most difficult case to decide. It is true that Wakahu received a hard blow on the face but it is also true that he stabbed an unarmed man and it is necessary that the punishment to be meted out to him shall be severe.

With regard to the second accused, Poine, as I have already indicated I am not satisfied that the Crown has proved beyond all reasonable doubt the common intent or that he took part in the assault which it is necessary should be proved before this Court can find him guilty. His act in running away and being in company with one who he knew had stabbed the deceased is an act which must throw a grave suspicion upon him but that fact is not, in my opinion, enough to fasten the guilt upon him or sufficient to corroborate the evidence of the three Sandorobo women.

I therefore convict you Wakahu of the manslaughter of John White under Section 188 of the Penal Code and I acquit you of the charge which has been preferred against you and you are discharged.

Wakahu, have you anything to say before sentence is passed upon you?

WAKAHU WA KIHENYA: The witnesses have made up a case against me and perhaps some of the witnesses have given evidence against me to help themselves. I have been thrown into the fire for no reason. I had no previous quarrel with the deceased. I have nothing more to say.

HIS HONOUR: Do you desire to say anything, Mr. Lean?

MR. LEAN: I would only ask Your Lordship to take into account the obvious youth of the accused and to bear in mind that I don't suppose there is anybody more sorry for what has happened than he himself is?

HIS HONOUR: He still denies it and I can see no evidence of any regret.

MR. LEAN: I am in Your Lordship's hands and I would ask you to deal as mercifully with the accused as possible.

SENTENCE

The Sentence of the Court upon you, Wakahu wa Kihanya, is that you will be imprisoned with hard labour for 12 years.

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IN HIS MAJESTY'S SUPREME COURT OF KENYA

SESSIONS HOLDEN AT NAKURU

CRIMINAL CASE NO. 75 OF 1958

R E A

VERBIS

- (1) WAKAHU WA KIMENYA
- (2) KOLIE WA RUTINJ

DECLARATION VERIFYING TRANSCRIPT OF SHORTHAND  
NOTES OF TRIAL

I, JAMES STANLEY TEMPLETON, Official Shorthand writer to His Majesty's Supreme Court of Kenya, do solemnly and sincerely declare that having been required by the Registrar of His Majesty's Supreme Court of Kenya to furnish him with a transcript of the shorthand notes relating to the trial of the above case, to which transcript this Declaration is annexed, I, the said James Stanley Templeton certify that this is a correct record of the proceedings at the said trial.

DECLARED at Nairobi this  
30th day of August 1958,  
before me:

*Stanley Templeton*

REGISTRAR,  
SUPREME COURT OF KENYA.

AIR MAIL

KENYA

No. 3/3



GOVERNMENT HOUSE

NAIROBI

KENYA

14 June, 1938.

Sir,

I have the honour to acknowledge the receipt of Lord Harlech's despatch No. 271 of the 16th May and to transmit for your information copies of correspondence with Mrs. F. White on the subject of the death of her son at Mjoro on the 10th May.

2. Subject to confirmation being received from Captain Harries that he possesses the requisite authority from Mrs. White, it is proposed to issue a permit for exhumation, but on account of Police objections exhumation cannot be permitted until the completion of the judicial proceedings.

3. Mrs. White will be informed when the permit has been issued, and the relevant provisions of the Births and Deaths Registration Act, 1926, regarding the importation into England of human remains, will be explained to her.

I have the honour to be,

Sir,

Your most obedient, humble servant,

*R. Brooker-Bolton*

AIR CHIEF MARSHAL.

G O V E R N O R.

THE RIGHT HONOURABLE

MALCOLM MACDONALD, M.P.,

SECRETARY OF STATE FOR THE DOMINIONS,

DOWING STREET,

LONDON, S. W. 1.



10, Dew Street,

Haverfordwest,

Pembrokeshire,

S. Wales.

11th May.

The Colonial Secretary;

Dear Sir:-

I am writing with reference to the death of my son John White who was stabbed by a native in Nakuru last week.

I have been making enquiries in London about the embalming of his body but according to Dr. A. M. Paterson, Director of Medical Services, Kenya, it is an impossibility after burial has taken place.

Being my only son, I feel I must have his body home, and I have been told it is possible to have the body exhumed and shipped home in a leaden case.

If you will very kindly give authority for the exhumation, as soon as possible, I shall indeed be very grateful.

I am writing to Capt. Harries of Njoro (my son's employer) giving him authority to make the arrangements.

I am also making arrangements with the Union-Castle Line for the conveyance of the corpse.

It is indeed a very tragic affair.

For such a long time my husband and myself have begged our son to return home, and he had actually booked his passage for the 28th of May to sail home to us.

I sincerely hope this can be arranged immediately.

Thanking you,

I remain,

Yours truly,

(Sd) Mrs. F. M. White.

r. M. 24/1/86.

23rd May 1938.

Madam,

I have the honour to acknowledge your letter of the 11th May, 1938, and to offer to you my sincere sympathy in the loss which you have suffered through the death of your son. I have written to Captain Harries of Njoro asking him to confirm that he has received your authority to make arrangements to send your son's body to England, in order that I may forward to him the necessary permit for exhumation.

I have the honour to be,

Madam,

Your obedient servant,

H. G. PNEY  
ACT. COLONIAL SECRETARY.

MRS. F. H. WHITE,  
10, Dew Street,  
HAVERFORDWEST,  
PENNINSULAR,  
SOUTH WALES.

38/32/109/38

C. O.

Mr. ~~Cook~~ White 2/6

Mr. Campbell 2/6

Mr. Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh

Permt. U.S. of S.

Party. U.S. of S.

Secretary of State.

C. I.  
R 2-11  
D 8

DRAFT.

Mrs F. White

at 56 Ladbroke Road

Notting Hill Gate

W. 1.

Madam refer to  
I am etc to act to

(6) receipt of your letter, received in this office on the 1st of June, on the subject of the death of your son in Kenya on the 2nd of May.

2. While feeling the sincerest sympathy with you in the circumstances attending of your son's death, Mr. MacDonald regrets that there are no funds <sup>at his disposal</sup> available out of which compensation <sup>can</sup> be paid to you.

If during your stay in London there is any other matter in regard to which you would wish to read

FURTHER ACTION.

This Office, a member of  
the East African Dept. will  
be deputed to see you. It  
would be appreciated if ~~you~~ <sup>in that</sup>  
event you could give notice  
by telephone of the time at  
which you would call.

Yours

}

(Signed) A. J. DAWE,

Key Stone Hill Farm

6 Amersall. <sup>2376</sup>

Mr. Haverfordwest

Pembrokeshire

S. Wales

Under Secretary  
for the Colonies

Dear Sir:

~~O. G. P. S.~~  
I shall be so grateful  
if you can help me  
in the following matter.

My son Tahu White  
aged - 25 years, was stabbed  
to death by a native in  
Marsabit, Kenya on the  
2<sup>nd</sup> of May.

He had been out  
in Kenya five years  
& was due to sail  
home on the 28<sup>th</sup> inst.

this matter

I wish to bring my  
son's body home, & that  
I understand is going  
to be very expensive, &  
therefore I should be  
only too grateful for  
a sum of compensation  
to help matters.

I remain

Yours truly

F. A. White

P.S. I shall be staying in  
London for few days, if  
you care to see me, my  
address is 56 Ladbroke Road  
Hatting Hill Gate.

G. O.

38132/109/38



Mr. Costley-White 12/5/38

Mr. Faskin 12/5/38

Mr.

Sir H. Moore,

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DOWNING STREET.

16 May, 1938.

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Sir,

I have etc. to transmit

copies of correspondence with

Mrs. F. White on the subject of the

death of her son at the hands of a

native in Njoro, on the 3rd of May.

2. From her letter of the 5th of

May it will be seen that her wishes

were that his body should be cremated.

~~I understand however that she~~  
~~Since the letter to her on the 10th of~~

May was written I have been informed

that her desire now is not that

~~cremation should take place but that~~  
~~is now pursuing the question whether~~  
the body should be exhumed, placed in

~~an air-tight container, and brought to~~  
~~his country~~  
England for burial ~~here.~~ It is

understood that she is addressing

your

DRAFT. for consen.

KENYA

NO. 271

GOVERNOR

above  
copy

(1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

To M: White (5th)

FURTHER ACTION.

Reply for  
in Kenya vety  
to No 3.

your Government direct on the <sup>matter.</sup> ~~question~~ of  
the ~~arrangements necessary~~ to obtain  
permission for ~~exhumation~~ to take place.

3. I also enclose a copy <sup>copies</sup> of ~~a letter~~  
<sup>with</sup> from Mr. J. White, father of the deceased  
Mr. White, <sup>on the 25</sup> ~~inquiring~~ whether there is any  
source of compensation for the death of  
his son. ~~I assume that there is, in fact,~~  
~~none but would be glad of your observations~~  
on this point.

I have, etc.



38132/100/38

4 239

C. O.

Mr. Paskin 12/5/38

Mr.

Mr.

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

13 MAY 1938

Sir,

(3)

I am so to ack. the receipt of your letter of the 10<sup>th</sup> of May in regard to the death of your son and to inform you that there is no War-time Compensation legislation in force that would be applicable to such a case.

I am,

(signed) J. J. PASKIN.

DRAFT.

J. White Esq.

Copy to King (5)

FURTHER ACTION.

Copy to King  
with J. J.

Keystone Hill Farm  
Mt. Waverford.  
10/5/58 3 240

To  
The Secretary of Colonies

Dear Sir

I respectfully desire to seek the following information, I have lost my son in Kenya Colony fatally stabbed to death by a coloured employe, he was employed by a Private employe, on a butchery business and large ranch and while performing his duties he met his death.

I now seek the information relative to his case (1<sup>st</sup>) would his employe have had him insured under Employe's liability act. (2<sup>nd</sup>) Do Employe's liability act operate in Kenya Colony. (3<sup>rd</sup>) Is there any other source of compensation assuming that Act do not operate in said Colony.

Trusting you will oblige with an early reply.

Yours faithfully  
J. White

To the Secretary  
of Colonies  
Whitehall

Ans (H)

Copy to Kenya (5)

38132/109/38.

2 241

C. O.

Mr. Paskin 9/5 f.s.

Mr.

Mr.

Sir H. Moore.

Sir G. Tomkinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

10 MAY 1938

Madam,

I am sorry to refer to your letter to the F.O. of the 5<sup>th</sup> of May & to convey to you an expression of sympathy with you in the death of your son.

So far as the U.S. of S. as ~~discussed~~ is aware there are not in Kenya any facilities wh. wd. enable you wishes to be met.

a copy of your letter is however being sent to the Gov. in case the local authorities are able to suggest any means of meeting your wishes.

(Signed) J. J. PASKIN

DRAFT.

Miss F. White.

Copy to Kenya (5)

FURTHER ACTION.

Copy to Gov. change of

242  
Key stone Hill  
Farm

6 am case

Mr Hawryowl-  
west

Rembrakeslin

S Wales

5<sup>th</sup> May 1978

Dear Sir,

Will you kindly  
give us some information  
on the following subject

My son has been  
stabbed to death by  
a native in Ngoro,  
Kenya, on Tuesday  
last the 3<sup>rd</sup> May

We want him

copy to Kenya

ans

214



Secretary  
Foreign Office  
White Hall  
London

245  
END

THE communication herewith enclosed, which has been received at the Foreign Office, but which appears to concern the *Colonial office*

is transmitted with the compliments of the Under-Secretary of State for Foreign Affairs.

Foreign Office

2. 16. May 1938