



Republic v Baya (Criminal Case 1 of 2012) [2019] KEHC 10898 (KLR) (15 March 2019) (Ruling)

Neutral citation: [2019] KEHC 10898 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE 1 OF 2012
DO CHEPKWONY, J
MARCH 15, 2019**

BETWEEN

REPUBLIC PROSECUTOR

AND

JUMA KITSAO BAYA ACCUSED

RULING

1. The accused person, Juma Kitsao Baya, is charged with the offence of Murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).

The particulars of the charge being that:-

“On the night of 2nd and 3rd day of January, 2012 at Palakumi Location in Ganze District within Kilifi County, the accused person murdered Shida Charo Ziro”.

2. The accused person was first arraigned in court on January 4, 2012 on which day he was referred for Psychiatrist examination and the Deputy registrar of this court directed to assign him counsel.
3. The accused person took plea on January 30, 2012 and a plea of not guilty was entered against him.
4. The hearing of this case commenced on May 10, 2012 before Justice Grace Nzioka and seven (7) witnesses testified. The matter was then taken over by Justice Maureen Odero and on June 26, 2013 an order issued on the matter to start *de novo*. Since then, no witnesses were ever availed before this court to testify despite the prosecution having been granted several adjournments.
5. Today. The prosecution has applied for an adjournment and the same has been objected to by the defence counsel on the grounds that the case is old, being a 2012 case and also that the prosecution have failed to avail witnesses despite having been given many chances to do so. The court upheld the defence counsel’s objection and declined to grant the prosecution an adjournment. This led to the prosecution closing their case.



6. The defence has submitted that since the prosecution has closed their case without calling any witness, the accused person should be acquitted.
7. It is my finding that the prosecution has closed their case without calling any witness or adducing any evidence before this court to prove the charge against the accused person, who faces a charge of Murder.
8. In the circumstances, I find that the prosecution having failed to call any witness or adduce any evidence against the accused person for the offence of Murder, a case has not been established to warrant the accused person be placed on defence and I proceed to acquit him accordingly.

Orders accordingly.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 15TH DAY OF MARCH, 2019.

D. O. CHEPKWONY

JUDGE

In the presence of;

M/S Ocholla for the State

M/S Chala for accused

Court Assistant - Beja

