

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO.23 OF 2014

REPUBLIC PROSECUTION

-VERSUS-

ENOCK NYABUTO 1ST ACCUSED

JOHN OCHWARI 2ND ACCUSED

RICHARD OMBIRO RESI 3RD ACCUSED

ALLOYS OGEO 4TH ACCUSED

RULING

1. **JOHN OCHWARI** (2nd accused), **RICHARD OMBIRO RESI** (3rd Accused) and **ALLOYS OGEO** (4th accused) jointly face a charge of murder contrary to Section 203 as read with Section 204. The particulars of the offence are that, 'On diverse dates of between 18th and 19th January, 2014 at Gesabakwa village, Onywere sub-location in Marani district within Kisii County, jointly murdered **OSUMA MENGE**.
2. The 2nd, 3rd and 4th accused person pleaded not guilty to the said charge. **ENOCK NYABUTO** 1st accused pleaded guilty to lesser offence of manslaughter and was sentenced to 7 years imprisonment on the 9th of May 2016. The case came for hearing on several occasions from the date of plea. On 6th of June 2018 the prosecution was given last adjournment and the matter was scheduled for hearing on 25th September 2018. Today the prosecution has informed the court that they have no witnesses to call, as the key witness died and the three other witnesses have moved to unnamed locations cannot not be traced. The prosecution has failed to adduce any evidence to support the charge of murder brought against the 2nd, 3rd and 4th accused persons. In the absence of any evidence against the 2nd, 3rd and 4th accused persons the charge against them cannot stand; each accused person has no case to answer. The 2nd, 3rd and 4th accused persons are acquitted under Section 210 of the Criminal Procedure Code. The 2nd, 3rd and 4th accused persons shall be freed unless lawfully held.

Dated signed and delivered this 25th day of September 2018

R.E OUGO

JUDGE

In the presence of;

Accused No.2, 3 & 4 Present

Mr. Otieno For the State

Mr. Sagwe For the Accused

Ms Rael Court/ Clerk