



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

CRIMINAL MURDER NO.93 OF 2014

REPUBLIC..... STATE

VERSUS

JAMES MACHERA MUTINDI ACCUSED

RULING

- 1. JAMES MACHERA MUTINDI** (the accused) faces a charge of murder contrary to **Section 203** as read with **Section 204 Penal Code**. That on the night of 12th and 13th November 2011 at **SAKURI** village in **NYABASI EAST LOCATION**, in **KURIA EAST DISTRICT** within **MIGORI COUNTY**, he jointly with another already before court murdered **DANIEL MARWA CHACHA** (the deceased).
- The accused denied the charge and was represented by Mr. Odhiambo Kanyangi, while Miss Owenga appeared for the State.
- The matter was initially heard by Mrima (J) who unfortunately fell ill in the middle of the trial and I took over.
- IBRAHIM CHACHA** (PW2) narrated to this court how while at his home in **TARAGAI** sub location on 13/11/11 at 1.00 a.m., he received a phone call from his cousin **NYAMOHANGA** that his two brothers **DANIEL MARWA CHACHA** and **MOSES MARWA RANGE** had been killed at **SAKURI** which is about 20 km from **TARAGAI**.
- PW2 got his sister **GHATI** to accompany him to the scene where they found the two bodies in the downward part of a home. He then informed close relatives, friends, the area DC and police. PW2 stated that **NYAMOHANGA** did not tell him who had killed his brothers, nor did PW2 know how his two brothers met their death.
- ENOCK BANTO CHACHA** (PW3) got the information from PW2 on phone that his two sons had been killed. He too went to the scene and found the two lying dead near a coffee factory – the bodies were a few metres apart from each other. He did not know who had killed them.
- A post mortem conducted by **DR. AGGREY ADIGIZA AKIDIVA** (PW1) confirmed that **DANIEL MARWA** died as a result of severe haemorrhage due to injuries inflicted on the neck which cut the left artery. He also informed the court that **ENOCK RANGE MARWA** died as a result of haemorrhagic shock due to severance of the artery on the neck.
- There were no other witnesses called to testify after the court granted a last adjournment and the prosecution was unable to secure the attendance of any more witnesses.

9. I have considered the submissions made by Mr. Kanyangi O., that there is no evidence whether direct or indirect, or even circumstantial, linking the accused to the offence. Both witnesses were not present when the incident took place and had no idea who may have killed the two brothers.

10. There would be no reason whatsoever to place the accused person on his defence as there is no evidence whatsoever that the accused committed the offence and I record a finding of **NOT GUILTY** under **Section 306 (1)** of the **Criminal Procedure Code**.

11. The accused shall be set at liberty forthwith unless otherwise lawfully held.

Written and dated this 26th day of January, 2017 at Homa Bay.

H.A. OMONDI

JUDGE

Delivered and dated this 31st day of January, 2017 at MIGORI

A.C. MRIMA

JUDGE