



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT HOMA BAY**  
**CRIMINAL MURDER NO.10 OF 2014**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**JEREMIAH OKENO JUMA ..... ACCUSED**

**RULING**

1. The accused (**JEREMIAH OKENO JUMA**) was charged with murder contrary to **Section 203** as read with **204** of the **Penal Code**. The case against him being that on 20<sup>th</sup> day of March 2014 at **NGUKU ICIPE** village **KANYADOTO** location in **NDHIWA**, he murdered **BARNABAS OKUMA AKEYO** (deceased). The accused who was represented by **MR. OSORO** denied the charge.
2. The only evidence presented to this court was that of **DR. FRANCIS OCHIENG** (PW1) who conducted a post mortem on the body of the deceased on 27/03/2014 at Homa Bay County Referral Hospital. His findings were that externally there were traces of bleeding on the head, chest, abdomen, lower and upper limbs all which had bruises. The head was covered with clotted blood.
3. Internally there were no abnormalities and the cause of death was indicated as severe haemorrhage due to head injury, probably caused by a blunt object.
4. That was the only witness who testified and after numerous adjournments it became apparent that prosecution would never be able to get another witness to testify. To give clarity to the matter the accused appeared in court on 03/04/2014 for plea and the matter was then fixed for hearing on 19/05/2014 but it failed to take off and it was rescheduled to 16/07/2014 but it failed to proceed on 06/10/2014 as the prosecutor had not received the duplicate file nor supplied the defence with witness statements.
5. When it next came up for hearing on 06/10/2014 the defence counsel was unwell and it was adjourned to 15/12/2014 when the State Counsel indicated she was not ready because the Government Chemist had not availed the exhibits.
6. It was then adjourned to 28/04/2015 when again the State Counsel indicated unpreparedness because the Government Chemist report was not ready.
7. The matter was then adjourned to 11/06/2015 but it did not proceed and no reason was recorded and it was rescheduled to 03/11/2015 when it was adjourned again on grounds that the Government Chemist report was not ready hence the prosecution could not proceed.
8. It was then adjourned to 12/04/2016 – however again the Government Chemist had failed to attend court and apparently no other witness was indicated as present in court, and hearing was rescheduled to 03/05/2016. Once again it failed to take off and on 06/05/2016, the Government Chemist attended court

to explain the difficulties they were having in carrying out examination and analysis of the exhibits sent to their offices – there was lack of reagents. Hearing was set for 23/05/2016.

9. Finally on 23/05/2016, the Government Chemist report and the exhibits had been collected and the Government Chemist's representative was present in court. However as fate would have it, the accused failed to appear in court and a warrant of arrest was issued.

10. Accused presented himself in court on 06/06/2016 but the Deputy Registrar could not deal with the issue of his non attendance and he was remanded in custody until 23/06/2016 when he appeared in court and gave an explanation showing that the date appended on the copy of his bond by the Court Assistant differed from the date the court had given – it was shown as 06/06/2016 for hearing.

11. The warrant of arrest was lifted and hearing set for 11/08/2016 – but this date fell within the High Court vacation period and the hearing was set for 28/09/2016, which coincided with a function the trial judge had to attend in Zimbabwe and hearing was rescheduled to 10<sup>th</sup> October 2016 which is the day **DR. FRANCIS OCHIENG** testified.

12. Thereafter another date was given for 13/02/2017 but the State Counsel informed the court that no witnesses were bonded and the court gave a **LAST** adjournment to 22/3/2017.

13. Invariably on 22/03/2017, the prosecutor indicated she was expecting 2 witnesses travelling from Ndhiwa and requested the court to place the file aside to 11.00 a.m. This was agreeable to Mr. Osoro.

14. However at 12.10 p.m. the witnesses had not turned up and Miss Ongeti's request for adjournment was declined.

15. The only evidence presented simply confirmed that **BARNABAS OKUMA AKEYO** had died following severe bleeding as a result of multiple injuries. However there was not a scintilla of evidence linking the accused to his death. Consequently there is nothing to warrant placing the accused on his defence to answer the charge and I make a finding of **NOT GUILTY** under **Section 306 (1)** of the **CPC**.

16. He shall be set at liberty forthwith unless otherwise lawfully held.

**Delivered and dated this 30<sup>th</sup> day of March, 2017 at Homa Bay**

**H.A. OMONDI**

**JUDGE**