



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT KISUMU**  
**CRIMINAL CASE NO. 51 OF 2012**

**BETWEEN**

**PROSECUTOR..... REPUBLIC**

**AND**

**SAMUEL OMONDI GOMBE *alias* AGOK ..... 1ST ACCUSED**

**VITALIS OBULA OKENDO *alias* DAKTARI ..... 2ND ACCUSED**

**HEZRON OTIENO OKENDO *alias* OTIS ..... 3RD ACCUSED**

**CHARLES OTIENO OMOLO ..... 4TH ACCUSED**

**RULING**

1. On 20<sup>th</sup> July 2012, this Court was informed that **SAMUEL OMONDI GOMBE *alias* AGOK, VITALIS OBOLA OKENDO *alias* DAKTARI, HEZRON OTIENO OKENDO *alias* OTIS** and **CHARLES OTIENO OMULO** had murdered **MESHACK OWINO MUHUR** (the deceased) on 19<sup>th</sup> July 2012 at Karapul Village, Siaya Township, Siaya District jointly with others not before the Court.

2. After considering the testimony of 5 prosecution witnesses, I am satisfied that there is sufficient evidence to put the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> accused on their defence. The principal eye witness did not identify the 4<sup>th</sup> accused nor was there independent corroborative evidence to implicate him. The investigating officer Corporal Patrick Malumana (PW 5) admitted that the 4<sup>th</sup> accused was implicated by the co-accused. In the absence of corroboration, this is evidence of the weakest kind. Accordingly, the 4<sup>th</sup> accused, **CHARLES OTIENO OMOLLO**, has no case to answer and I hereby enter a finding of not guilty under **Section 306** of the *Criminal Procedure Code (Chapter 75 of the Laws of Kenya)* and he is accordingly acquitted.

3. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> accused are now informed of their right to remain silent, to give unsworn statement in which case they shall not be cross-examined or to give sworn testimony in which case they shall be cross-examined by the prosecution. They may also elect to make an address through their advocate. They are also informed of their right to call witnesses.

**DATED and DELIVERED at KISUMU this 30<sup>th</sup> day of November 2016.**

**D.S. MAJANJA**

**JUDGE**

Mr Adiso instructed by Adiso and Company Advocates for the accused.

Ms Osoro, Prosecution Counsel, instructed by the Office of the Director of Public Prosecutions, for the State.