

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

CRIMINAL CASE NO.7 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

DAVID ODOYO OKOTH.....ACCUSED

RULING

1. **DAVID ODOYO OKOTH** is charged for the offence of murder on allegation that on 25th day of March 2016 at **OYUGIS** Township in Rachuonyo South Sub-County within Homa Bay County, he murdered **QUINTER AWINO OTIENO**. He denied the charge and hearing was scheduled for 31st October 2016.

2. However on the day of hearing, **MISS ONGETI**, representing the State, applied to withdraw the charge based on **Article 157 6 (C)** of the **Constitution of Kenya** as read with **Article 157 (9)**, so as to pave way for further investigations and directions from the DPP on the way forward.

3. In an affidavit dated 13th September 2016 sworn by **PC EZEKIEL TALLAM** (the investigating officer) he explained that in the course of his investigations he learnt that the deceased and the accused were together at the scene of the murder, on the date in question as they had a joint business at **OYUGIS** market.

4. He established that the accused stabbed the deceased on the left upper chest wall and she was rushed to Matata Nursing home but she died on arrival at the hospital.

5. He had recorded statements from an eye witness named **SHARON CELESTINE OTIENO** and another key witness **PAUL OTIENO ONYANGO**.

6. The eye witness **SHARON** has become uncooperative and is unwilling to record any further statement, while the other witness (Paul I suppose), is missing and cannot be traced.

7. **Article 157 (b) (C)** of the **Constitution** provides:-

“The Director of Public Prosecutions shall exercise State powers of prosecution and may discontinue at any stage before judgment is delivered and criminal proceedings instituted by the Director of Public Prosecutions.”

8. Apparently other key witnesses who were at the scene cannot be traced. It is apparent the prosecution is caught up in a catch 22 and it is prudent that this matter be withdrawn to enable further investigations and also direction from the DPP on the way forward. The defence counsel has no objection. I therefore allow the application and mark the case against the accused as withdrawn and the proceedings herein be and are terminated.

9. The accused is discharged. The sureties in this matter are also discharged and I direct that any securities deposited shall be released to them.

Delivered and dated this 16th day of November, 2016 at Homa Bay

H.A. OMONDI

JUDGE