



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MIGORI**

**HCCR NO. 57 OF 2014**

**(FORMERLY KISII HCCR NO. 41 OF 2014)**

**BETWEEN**

**REPUBLIC .....PROSECUTOR**

**AND**

**BARRACK OLUOCH MARAGA ..... ACCUSED**

**RULING**

The accused **BARRACK OLUOCH MARAGA** and **JACK OMONDI OGOLA** were charged with murder contrary to **section 203** and **204** of the **Penal Code (Chapter 63 of the Laws of Kenya)**. The information was that on 25<sup>th</sup> March, 2014 at Magina area within Migori County, they jointly murdered **Joseph Oyamo Doti**.

The facts leading to the death of the deceased were quite unfortunate. His wife, **Benta Akinyi Oyamo, (PW1)** recalled that on 25<sup>th</sup> March, 2014, a gang of boda boda riders came to her homestead demanding that she produce or disclose the whereabouts of her husband, Joseph Oyamo Doti (“the deceased”). After harassment, she told them that he had been admitted to Mariwa Dispensary. The gang left immediately thereafter and proceeded to Mariwa. She does not recall seeing the accused at the scene though she noted that the 1<sup>st</sup> accused was present and was sympathetic to her and indeed asked the other people not to harass her. Thereafter PW1 was informed that her husband had been found dead at a place called Panyauka.

The other two witnesses, **PW2, Joseph Otieno Owira** and **PW3, Graneth Musolita Kegode**, both working at Mariwa Dispensary confirmed that on the material day, a gang of people came to the hospital and took away a patient, Joseph Oyamo Doti who had been admitted to be observation ward. They could not identify any of the members of the gang.

After the evidence of the three witnesses, the learned prosecutor sought to withdraw the case on the ground that the evidence was scanty at this stage. Both counsel for the accused, did not oppose the application but were concerned that their clients should not be subjected to a further trial on the same facts.

As I understand PW1, PW2 and PW3 are the three main witnesses in the matter. As regards the 2<sup>nd</sup> accused, none of them saw him either at the deceased's homestead or at the Dispensary. There is absolutely no evidence to implicate him.

As regards the 1<sup>st</sup> accused, the evidence against him can only be accepted with abundant caution since it is only PW1 who saw him in circumstances which were less than salutary. She was afraid at the time and she was being harassed. He was not seen at the dispensary. As to whether he was seen at the mortuary and became subject of recognition, is in doubt as PW1 never recorded in her statement that she knew any of her attackers. Moreover, nothing connects him to the death of the deceased. Even if he was at the scene, he could have withdrawn himself from the gang which went to the dispensary.

In the circumstances, I allow the prosecution to withdraw the case against both accused but in view of the

evidence that has been led, to permit the state to prosecute the case at a later stage would allow the prosecution to make up its case and plug holes in the facts. I therefore have no option but to acquit the accused of the murder of Joseph Oyamo Doti. They are set free unless otherwise lawfully held. The sureties are also hereby discharged.

**Dated, signed and delivered in Open Court at Migori this 16<sup>th</sup> day of June, 2015**

**D. S. MAJANJA**

**JUDGE**