



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**  
**CRIMINAL CASE NO. 44 OF 2011**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**FESTO OMOLO MATAKWA.....ACCUSED**

**RULING**

1. On 20/09/2011, **FESTO OMOLO MATAKWA** was arraigned before this Court and charged with the murder of **CATHERINE NYABINJI OMULO**. He denied the charge and a plea of not guilty was entered.
2. The record reveals that the case came up for hearing on several occasions and in all such instances, it was adjourned for one reason or the other. When it came up for hearing on 19/05/2015 the prosecution applied for yet another adjournment and amid strenuous objection from the defence Counsel, the Court reluctantly allowed the application for adjournment and marked it as the last one. The hearing of the case was then fixed for 13/07/2015.
3. When the case came up for hearing on 13/07/2015 the prosecution opted to and proceeded to close its case without calling any witnesses. The matter was then set for this ruling.
4. It is true that since the taking of the plea in this case no single witness testified and all along the Accused person has been in custody. At the close of its case, the prosecution had not tendered any evidence against the Accused person or in any manner whatsoever connecting the Accused person with the death of the deceased.
5. That being the position, the Court finds that the prosecution has failed to prove that the Accused person so committed or was in any manner whatsoever connected with the death of the deceased. The Accused person cannot therefore be placed on his defence. Pursuant to Section 306(1) of the Criminal Procedure Code, Chapter 75 of the Laws of Kenya, the Accused person is hereby found not guilty of the murder of **CATHERINE NYABINJI OMULO** as charged and is hereby set at liberty forthwith unless otherwise lawfully held.

**DELIVERED, DATED and SIGNED at KAKAMEGA this 28<sup>th</sup> day of July, 2015**

**A. C. MRIMA**

**JUDGE**