



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KISII**  
**MURDER NO. 46 OF 2011**  
**BETWEEN**  
**HENRY OMARE OBOKO.....ACCUSED**  
**AND**  
**REPUBLIC.....RESPONDENT**  
**RULING**

1. The accused HENRY OMARE OBOKO was charged with the offence of murder contrary to section 203 as read with Section 2004 of the penal code the particulars of which were that 17<sup>th</sup> May 2011 at Riribe village Kenyena District within Kisii County murdered SAMSON OBOKO OMWENO.
2. On 25/5/2011 the accused pleaded not guilty to the charges before Justice M.A. Makhadia as he then was and on 6/5/2013 Justice E.M. Muriithi granted the prosecution the last adjournment in this matter and set the application for bond on 21/5/2013 and hearing date set for 19/6/2013.
3. For reasons which are not indicated on the file the matter did not proceed for hearing on the said date until 21.1.2015 when it was fixed for hearing before me when Mr. Majale for the state made an application for adjournment on the basis that the four bonded witnesses could not be reached since they were reluctant to testify against the accused person but offered plea bargain agreement to the accused which was rejected by the same.
4. On 18.3.2015 the State called Pw1 PENINA NYANCHERA OBOKO who testified on oath that on 17/5/2011 the accused who had gone to vote in a youth election came back home while angry and the deceased who was his father came to the kitchen and took a knife and a chair and started pushing the accused and she further stated that when she saw the accused came towards her holding a brick she ran away.
5. At that stage Mr. Majale applied that the witnesses be stood over since she was testifying contrary to her statement and the State was granted adjournment and fixed the matter for further hearing on 28/5/2015 and the accused released on bond.
6. On 19/5/2015 the State applied for a further adjournment which application was allowed and the state granted final adjournment on the basis that the State had witnesses who were willing to testify. The matter fixed for further hearing on 15/7/2015 when the State applied for further adjournment which was opposed by Mr. Ondari for the accused person, which application was rejected by the court since the court was of the considered opinion that Article 50(2)(e) requires that trial must begin and concluded without

unreasonable delay. Mr. Ondari submitted that there was no case established against the accused person.

7. Sad as this case might be that is to say that the accused was accused of the murder of his father and it is apparent that all the material witnesses frustrated the prosecution case by failing to attend court to testify and though it is not right for a person to be killed the court of law rely on evidence and in criminal cases evidence beyond reasonable doubt.

8. It is clear that the state has not offered any evidence against the accused person and therefore the only option available to the court is to acquit the accused person which I hereby do. The accused person shall therefore be set free forthwith unless otherwise lawfully held.

**Delivered, signed and dated at Kisii this 23<sup>nd</sup> day of July 2015.**

**J. WAKIAGA**

**JUDGE**

**In the presence of:**

**Mr. Ondari advocate for the accused.**

**Miss. Boyon advocate for the state.**