



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 5 OF 2011**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**NELSON KIBERENGE AFUNDI.....ACCUSED**

**RULING**

1). The accused herein was charged with the offence of Murder contrary to section 203 and 204 of the penal code.

The particulars are that on the 13th day of January 2011 at City Centre in Kisumu district within Nyanza province murdered one **Collins Opondo Mulo**.

2). The accused was brought to court on 14-1-2011 where the accused was not required to plead. Eventually, after the psychiatric report was availed the accused was required to plead. He denied the charge on 31-1-2011.

On 3-2-2011 the state requested for another psychiatric report. Again on 14-2-2011 the charge and statements was read to the accused person and he still denied.

3). On 6-4-2011 the state made another application for mental assessment which was granted.

On 1-12-2011 Dr. Onyango the provincial psychiatric attended court and testified. He told the court under oath that the accused was not fit to plead. He said that he should be referred to further mental treatment.

4). On 16-5-2012 the state told the court that the accused was now fit to plead. For avoidance of doubt and although the accused had pleaded twice the court ordered him to plead again. He again denied the charge.

5). On various dates in particular 8-11-2012, 28-3-2013, 14-11-2013 and 22-1-2014 the prosecution have failed to call any witness. They have all along asked for adjournment and there has never been any proof that the witnesses were bonded or not. Several adjournments have been granted to them yet they have failed to avail their witnesses.

6). Essentially, it is their case. It is the business of the prosecution to exhibit seriousness in any case. By the time an accused is brought before court the prosecution is expected to have undertaken sufficient investigations to buttress the charge against an accused.

7). I do not see any seriousness exhibited in this case. No meaningful effort was shown by the prosecution despite this court's indulgence. Eventually, they closed their case.

8). Consequently, litigation must come to an end. The case against the accused was never established at all. Nobody knows the truth except the accused! The devil and God. All the benefit must be accorded to the accused. In the premises I shall acquit him under the provisions of section 210 of the Criminal Procedure Code.

**Dated, signed and delivered at Kisumu this 29th day of January, 2014.**

**H.K.  
JUDGE**

**CHEMITEI**