

REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CRIMINAL CASE NO. 27 OF 2011

REPUBLICPROSECUTOR

VERSUS

ZULIA KISHINDO

OMAR KAHINDI KISHINDOACCUSED

RULING

1. The two accused were jointly charged with the murder of James Kambi Balozi alias Kimbu on the 4th April, 2011 at Paziani Kavunyalo Location, Malindi. The prosecution called seven witnesses and were forced to close their case due to continued failure to produce witnesses at the trial.
2. From the evidence on record, there can be no doubt that the deceased was murdered, and in a most brutal manner, through truncation of his neck on the 4th April, 2011. As to the identity of his killers, all that is before the court is evidence amounting to suspicion, based on allegations of persons threats issued by the first accused, in particular, and an existing land dispute between the family of the accused persons and that of the deceased.
3. There is no direct or circumstantial evidence to sufficiently connect any of the accused with the actual murder. Two letters allegedly dropped at the home of the deceased warning him and his family of violence were not produced and the authors thereof are unknown. The witnesses, particularly PW2 and PW7 appeared confused about the dates of the finding of the said letters relative to the date when the death occurred.
4. The accused cannot be called upon to defend themselves against such scanty evidence. Clearly, the case was poorly investigated and it didn't help that witnesses memories appeared to have faded by the time they appeared to testify. The accused have no case to answer and are acquitted under Section 306 (1) of the Criminal Procedure Code.

Delivered and signed this **21st** day of **July, 2014** in the presence of the accused, Miss Otieno for the accused, Mr. Nyongesa for the State.

Court clerk – Samwel.

C. W. Meoli

JUDGE

ORDER - sureties discharged.

C. W. Meoli

JUDGE