

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MURDER CASE NO. 2 OF 2007

REPUBLIC.....PROSECUTOR

VERSUS

JOASH OMAL JUMA.....ACCUSED

R U L I N G

The court has perused both the prosecution as well as the defence case. Apparently the postmortem report was simply marked and not produced as an exhibit. Though it was the duty of the prosecution to ensure the production of the same, this court cannot ignore that for substantial justice to be attained both for the accused and the deceased, the postmortem report ought to be produced as a matter of necessity.

Under the cover of substantial justice enshrined in Article 159 of our Constitution as well as section 150 of the Criminal Procedure Code Chapter 75 of the Laws of Kenya, this court shall *suo moto* order the production of the postmortem report. This position was equally adopted by the Court of Appeal for East Africa in Murimi -VS- Republic [1967] E.A at page 42.

The parties shall have the liberty of cross examining the maker if need be.

Subsequently, the court shall proceed to deliver its judgment.

Orders accordingly.

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

H.K. CHEMITEI

JUDGE