



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CRIMINAL CASE (MURDER) NO. 54 OF 2008

REPUBLIC PROSECUTOR

VERSUS

JULIUS OKONGO BARONGO ACCUSED

JUDGMENT

1. The accused herein, **Julius Barongo** is charged with murder contrary to **section 203** as read with **section 204** of the **Penal Code**. The particulars of the offence are that on the 18th November 2008 at Boige village, Makara sub location, South Gucha District within Nyanza Province, jointly with another not before the court murdered **SIMON OMBOGA KIMONGE**. The accused denied committing the offence.

2. The prosecution has not called any single witness in support of its case against the accused person. The advocate for the defence prays that in the absence of any evidence to connect the accused with the offence, the accused is entitled to an acquittal under **section 306 (1)** of the **Criminal Procedure Code**.

3. I have considered the submissions. The law is that he who alleges must prove. In the instant case, the prosecution alleged that the accused

Julius Barongo murdered **Simon Omboga Kimonge** on the 18th November 2008. No iota of evidence has been placed before this court as proof of that allegation.

4. Accordingly and for the reasons above stated, the court finds that the prosecution has not proved its claims of murder against the accused person beyond any reasonable doubt. The accused did not admit the offence. In the circumstances, the accused herein is acquitted of the charge of murder in accordance with the provisions of **section 306 (1)** of the **Criminal Procedure Code**.

5. Unless he is otherwise lawfully held, the accused shall be released from prison custody forthwith.

6. It is so ordered.

Dated and delivered in open court here at Kisii this 26th day of January, 2012.

RUTH NEKOYE SITATI
JUDGE.

In the presence of:

Mr. Gitonga for the State

Mr. Kerosi Ondieki for Mbicha for accused

RUTH NEKOYE SITATI

JUDGE.

26/01/201