



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

CRIMINAL CASE NO. 22 OF 2004

REPUBLIC

V E R S U S

DICKSON OMBONYA WAMBANI ----- ACCUSED

R U L I N G

1. The accused herein, **DICKSON OMBONYA WAMBANI** was charged with the offence of murder contrary to S.203 and S.204 of the Penal Code. The particulars of the offence were as follows;

“That on the 2nd day of May, 2004 at Elwaswanbe village, Lubinu Sub-location, Weye Location in Butere-Mumias District within the Western Province murdered CHARLES MAKOKKHA.”

He denied the charge when it was read to him on 25.10.2004 and the case was fixed for hearing on 26.9.2005 and 27.9.2005

2. For various reasons noted on the record, the hearing never commenced and when I took over the matter, I noted that **Chitembwe, J.** had on 5.11.2009 granted the prosecution the last adjournment in the matter. The record for that day reads as follows;

“5/11/09

Coram: Before S. J. Chitembwe, J.

Mr. Karuri for State

c/clerk – Dorah

Accused present

Mr. Anziya h/b for Mr. Amasakha for Accused

Mr. Karuri: I have no witnesses today. I pray for my last adjournment.

S.J.CHITEMBWE, J.

Court: Case is fixed for hearing on 25/1/2010. The prosecution is granted the last adjournment.

S. J. CHITEMBWE

J U D G E”

3. In spite of the above order, on 22.2.2010, 22.3.2010, 14.7.2010 and 5.10.2010, the Prosecution was unable to avail any witness and the matter was deemed as closed.

4. No evidence against the accused person exists on the record and for six (6) years, he has remained in custody and yet none of his accusers has come forward to justify his continued incarceration.

5. Aside from the fact that he has no case to answer and has nothing to which he should respond to by way of a defence, his Constitutional right to an expeditious trial as enshrined in Article 50 (e) of the Constitution has been breached.

6. In the event, I have no choice but to find that the accused is not guilty and acquit him under S.306 of the Criminal Procedure Code.

7. Orders accordingly.

Dated, Signed and Delivered at Kakamega, this 18th day of October, 2010

ISAAC LENAOLA
J U D G E