

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII
CRIMINAL CASE NO. 57 OF 2002

REPUBLIC STATE COUNSEL
VERSUS
ERICK MOGOI NYARANGI) ACCUSED
FRANCIS MOI ARATI alias JOHN OMBONGI NGARE)

RULING:

The two accused were charged with offence of murder c/s 203 as read with s.204 of the Penal Code in that on 9th March 2002 at Keroka Town they murdered PUAL NYAKEMBO.

The prosecution called only two witnesses – DUKE OGORI (PW1) and VINCENT NYARIBO OGOTI (PW2). PW1 talked of seeing accused 2 quarrel with the deceased. PW2 said he saw accused 1 struggling with the deceased. Prosecution however did not call any other witness. The investigating officer never testified. The doctor, who performed post mortem, if any was held, was never called to testify despite numerous adjournments on application by the prosecution. The State Counsel got frustrated and closed the case because those vital witnesses failed to appear to testify. In absence of any medical evidence especially as to the cause of death the court finds there is no sufficient evidence to warrant court call the accused to defend themselves. Murder is a serious charge and prosecution have to present concrete evidence in court. The evidence of the two witnesses falls far short of such evidence. I find both accused not guilty and acquits them.

Dated and delivered at Kisii this 18th day of October 2004.

KABURU BAUNI
JUDGE
18/10/04

Mr. Chirchir for state
Mr. Mogire for Sagwe for accused.

KABURU BAUNI
JUDGE