



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT KISII**  
**CRIMINAL CASE NO.13 OF 2003**

STATE ..... PROSECUTOR  
VERSUS  
JOHN OTIENO MWAGA ..... ACCUSED.

**RULING**

Accused was charged with offence of murder. It was alleged that on 20th October 2001 at Oyienyo village Rachuonyo District he murdered KENNEDY OCHIENG JUMA.

The prosecution closed its case after calling two witnesses and in fact stated they wanted to withdraw the charge. The two witnesses who testified did not connect accused with the murder of the deceased. PW1 VITALIS JUMA MUMBO the father of the deceased only told court that his son went away from Moi University. He started to look for him. He later identified the body of his son at a mortuary in Oyugis. He did not know how he died.

PW2 MARK ONDIEK DUDI said on 20/10/04 at 5.30 p.m. he saw accused riding a bicycle. Tied to a bicycle was a panga which had some stains. He could not tell if the stains were blood or rust. The body of the deceased had been found early that morning. Clearly the evidence of the two witnesses is not enough to connect the accused with the death of the deceased. Neither PW1 nor PW2 saw who killed the deceased.

Doctor's evidence as to the cause of death of the deceased was not adduced.

I therefore found accused not guilty and acquits him.

**Dated and delivered at Kisii on 4th October 2004**

**KABURU BAUNI**  
**JUDGE.**