



**Republic v Orengo (Criminal Case 22 of 2020)
[2024] KEHC 1017 (KLR) (8 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1017 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE 22 OF 2020
RE ABURILI, J
FEBRUARY 8, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

JAMES ORENGO ACCUSED

RULING

1. This matter came up for hearing on 7th February 2024 and the prosecution informed the court that there was only one witness who was the doctor who performed an autopsy on the body of the deceased Dennis Odhiambo Omondi. The doctor was to testify online.
2. Suddenly, it emerged that the original Postmortem Report could not be traced from the original police file and the prosecution asked the court to issue summons to the original Investigating Officer which the court declined as the court should never be drawn into the internal administrative matters of the police investigators handling of police files since the courts are never consulted when those investigators are being transferred and in the process of handing over investigations files to the incoming officers.
3. It was upon the investigators to ensure that what they hand over or what is handed over is a complete investigations file with all relevant documents.
4. It emerges that this is a 2020 case and only one witness has ever testified. Precisely, the case was filed on 18th August 2020. The accused person has been in custody all this time and even with the doctor coming to testify only for the original postmortem report to be found to be missing, the other witnesses are said to have relocated from their places of abode and are untraceable by the current investigating officer who was never involved in the initial investigations..
5. The court notes with concern that despite a reported death, the Investigators never made concerted efforts to trace the crucial witnesses to testify in this case.



6. The accused person is presumed innocent until proven guilty but justice can only be served if all listed witnesses testify so that the society can appreciate why the accused person was arrested and arraigned.
7. For now, the prosecution cannot prosecute a person where most key witnesses are not available and the investigators have not made efforts to get the said witnesses.
8. In the premises, I am satisfied that the prosecution has made a case for termination of these proceedings under Article 157 (6) (c) and (9) of the Constitution.
9. The termination of these proceedings is not an acquittal of the accused person who may be rearrested and charged with the same offence.
10. Accordingly, I allow the nolle prosequi dated 8th February 2024 and order that the prosecution of James Orengo who is charged with the murder of Dennis Odhiambo Omondi as per information dated 18th August 2020 shall not continue.
11. Consequently, the accused person James Orengo is hereby discharged.
12. Unless otherwise lawfully held, he is hereby set at liberty.
13. This Ruling be typed
14. The file is closed.
15. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 8TH DAY OF FEBRUARY, 2024

R.E. ABURILI

JUDGE

