

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CORAM: R. OUGO J.

CRIMINAL CASE NO. 34 OF 2018 (MURDER)

BETWEEN

REPUBLIC.....PROSECUTOR

AND

SAMUEL OSEKO MOGIKOYO.....ACCUSED

RULING

1. By an Information dated the 3rd of September 2018 **Samuel Oseko Mogikoyo** ('the accused') was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that, on the 30th day of August 2018 at Mwabokono village in Bogiakomu location, Kisii South Sub-County within Kisii County the accused murdered Nyogora Osoro.

2. The plea was taken on the 18.9.2018 and the matter was set down for hearing on the 14/1/2019. On the 14/1/2019 the court was not sitting the case was adjourned to the 24/1/2019. On the 24/1/2019 the prosecution sought an adjournment as they had no witnesses. Thereafter the matter came up for hearing on the following dates; **18.3.2019, 3.6.2019, 11.6.2019**. On the 3.6.2019 the court was away on official duties. On the 11.6.2019 the prosecution sought a warrant of arrest for the witnesses after they failed to attend court despite being bonded. On same day the prosecution was given the last adjournment and their request to have the warrants issued for the witnesses was granted. The warrants were issued and again today the 10.7.2019 the prosecution had no witnesses. Mr. Otieno for the State informed the court that the witnesses could be found. The prosecution sought another adjournment. The application was opposed. I declined to grant an adjournment. The prosecution closed its case. The prosecution failed to tender any evidence in support of its case against the accused person. With no evidence adduced the accused has no case to answer. The prosecution case is dismissed as per the provisions of section 210 of the Criminal Procedure Code. **Samuel Oseko Mogikoyo** is acquitted of the charge of murder. He is free to go unless lawfully held. Any surety document held shall be released forthwith.

Dated, signed and delivered at Kisii on the 10th of July 2019.

R.E.OUGO

JUDGE

In the presence of;

Accused In person

Mr. Abobo For the Accused

Mr. Otieno Senior Prosecution Counsel Office of the DPP