

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO. 49 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

COSMAS MOKAYA MAGORI.....ACCUSED

RULING

The accused, COSMAS MOKAYA MAGORI, was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code (Chapter 63 of the Laws of Kenya). The particulars of the information were that on 29th August 2015 at Sosera Sub-location in Masaba South Sub-County within Kisii County, he murdered Eunice Ayuma Mokaya.

When this matter came up for hearing today, 10th July 2018 counsel for the prosecution applied to withdraw the matter by entering a *nolle prosequi* signed by Mr. Imbali Assistant Director of Public Prosecutions under Articles 157(6)(c) and 157(g) of the Constitution.

Counsel for the prosecution explained that the reason the matter had not taken off was that the prosecution was awaiting the Government Analyst report. The report dated 11th September 2017 was eventually received and it showed that the deceased had ingested an acaricide which is poisonous. According to the post mortem form the deceased died from poisoning. Mr. Otieno explained that according to the evidence the deceased was seen ingesting poison although there was evidence of assault. In his view therefore, the totality of the evidence could not sustain a prosecution for murder.

Having considered the reasons for termination, I hereby grant leave to the prosecution to withdraw this case. As there is no evidence to implicate the accused, COSMAS MOKAYA MAGORI is hereby acquitted for the murder of EUNICE AYUMA MOKAYA. He is accordingly discharged from these proceedings. The sureties are also discharged.

Dated and delivered at Kisii this 10th July 2018.

D.S MAJANJA

JUDGE

Mr. Otieno, Prosecution Counsel, instructed by Office of Director of Prosecutions

Mr. Bigogo, Advocate for the Accused