



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

CRIMINAL CASE NO. 112 OF 2014

REPUBLIC.....PROSECUTOR

-VERSUS-

JAMES OUMA SARONGE.....ACCUSED

-consolidated with-

CRIMINAL CASE NO. 9 OF 2016

REPUBLIC.....PROSECUTOR

-VERSUS-

EVANS JOHN OJWANDO.....ACCUSED

RULING

1. **JAMES OUMA SARONGE** was arraigned before this Court on 08/12/2014 and he was charged with an information on the murder of **KEVIS ODHIAMBO OGOWE**. The particulars were that he, jointly with another not before Court, committed the murder on the 11/11/2014 at Osiri Mines Camp in Mikei Location of Nyatike District within Migori County within the Republic of Kenya. The accused person denied committing the offence and was ordered to stand trial.

2. The case was thereafter fixed for hearing where one witness testified before **Hon. Majanja, J.** before he was transferred from the station. Upon compliance with **Section 200(3)** of the **Criminal Procedure Code**, the hearing proceeded before me where I also took the evidence of one other witness. Thereafter the hearing of the case stalled due to lack of witnesses until sometimes on 01/04/2016 when the case was consolidated with Criminal Case No. 9 of 2016 which was against one **EVANS JOHN OJWANDO** and a fresh plea taken by the now two accused persons. They both denied the joint information and fresh hearing was ordered.

3. The case was then set for hearing on several occasions and in none of such hearings did any witnesses attend Court to testify until 14/02/2017 when this Court declined any further adjournment and the prosecution therefore closed its case without calling any witness. That paved way to this ruling.

4. For the prosecution to secure a conviction in a murder charge, the following three ingredients must be affirmatively proved: -

(a) Proof of the fact and the cause of death of the deceased;

(b) Proof that the death of the deceased was the direct consequence of an unlawful act or omission on the part of the Accused which constitutes the 'actus reus' of the offence; and

(c) Proof that the said unlawful act or omission was committed with malice afterthought which constitutes the 'mens rea' of the offence.

5. Since there is no evidence at all on the record touching on any of the foregone ingredients of the information of murder then there is no nexus at all between the death of the deceased, if at all he died, and the accused persons. It will therefore serve no purpose to even place the accused persons on their defences. Pursuant to **Section 306 (1)** of the Criminal Procedure Code, Chapter 75 of the Laws of Kenya, I find that the accused persons herein **JAMES OUMA SARONGE** and **EVANS JOHN OJWANDO** are jointly and severally **NOT GUILTY** of the murder of **KEVIS ODHIAMBO OGOWE** and are hereby acquitted.

6. The accused persons shall forthwith be set at liberty unless otherwise lawfully held.

DELIVERED, DATED and SIGNED at MIGORI this 14th day of March 2017.

A. C. MRIMA

JUDGE