



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL CASE NO. 53 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

TIMOTHY OMUTEMBETE ALBET.....ACCUSED

J U D G M E N T

Introduction

1. The accused herein has been charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.
2. The particulars of the offence are that on the `15th day of October, 2014 at Shembekho Village Matioli Sub location South Butso Location in Kakamega Central District within Kakamega County he(accuse) murdered Geoffrey Makunda
3. The accused pleaded not guilty to the charge on 11.11.2014 and the case fixed for hearing.

The prosecution Case.

4. For reasons that are within their possession, prosecution have failed to call witnesses and supply witness statements to the defence, thus derailing the hearing process.

Analysis

5. The case was adjourned many times at the behest of the prosecution. The case is fairly old and has not taken off since the year 2014. The defence have also not been supplied with any witness statements to date.

Findings

6. I find that the accused's rights to a fair trial as enshrined under Article 50(2)(b), (c), (e) and (j) of the Constitution have been violated by the prosecution. The prosecution has also not adduced any iota of evidence in support of the case against the accused. For the reasons set out above the case against the accused is dismissed. The accused is therefore not found guilty of the charge of murder as alleged. He is acquitted of the same under Section 306(1) of the Criminal Procedure Code. Unless he is otherwise being lawfully held, he shall be released from prison custody forthwith. Orders accordingly.

Judgment delivered, dated and signed in open court at Kakamega this 14th day of March 2017

RUTH N. SITATI

JUDGE

In the presence of;

Mr. Jamsumba (present).....for state

Mr. Osango (present).....for accused

Polycap.....Court Assistant