



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**CRIMINAL CASE NO.36 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**JOHN WAFULA OMWOYO..... ACCUSED**

**RULING**

1. *John Wafula Omwoyo alias Mindoti*, the accused, was arraigned before court for the offence of murder contrary to **section 203** as read with section 204 of the Penal code. Particulars of the information were that on the 27<sup>th</sup> day of June 2014 at Manda Village in Kakamega North District, Kakamega County unlawfully murdered Rose Masitsa Omwoyo.

2. The accused took plea on 15<sup>th</sup> July, 2014 when he pleaded not guilty to the information. The case was then fixed for mention on 1<sup>st</sup> October, 2014 for purposes of fixing a hearing date. On that day, the case was again fixed for mention on 24<sup>th</sup> November, 2014 before the Deputy Registrar for fixing a hearing date. The case was again fixed for mention on 26<sup>th</sup> January 2015 and when it came before *Mrima J*, on that day, the Judge directed that it be mentioned again before the Deputy registrar on 11<sup>th</sup> July, 2015 for fixing a hearing date. Finally the case was fixed for hearing on 15<sup>th</sup> December, 2015.

3. When the case came up for hearing on the appointed date, the prosecution did not have witnesses and counsel for the accused was also absent. *Mr Oroni*, learned State Prosecutor, applied for an adjournment to enable him call witnesses. The case was adjourned with an order that a hearing date be taken before the Deputy Registrar on 8<sup>th</sup> January, 2016. It was once again fixed for mention on 12<sup>th</sup> January 2016, and on that day, it was fixed for hearing on 15<sup>th</sup> March, 2016.

4. When the case came up again for hearing on 15<sup>th</sup> March, 2016, Mr Oroni was not ready to proceed for the same reason that he did not have witnesses and sought an adjournment on that account. The court further noted the fact that *Miss Rauto* had not attended court on various occasions and therefore released counsel for the case and appointed *Mr Osango* to represent the accused. The court then set the case for hearing on 14<sup>th</sup> April, 2016 and directed the prosecution to ensure that witnesses attend court on the hearing date without fail.

5. As it turned out, on that day 14<sup>th</sup> April, 2016, *Mr Oroni* did not have his file and obviously witnesses were absent, and again as expected, he applied for an adjournment. The court granted an adjournment to the prosecution and fixed the case for hearing on 26<sup>th</sup> July, 2016 with a warning that witnesses should be in court when the matter comes up next for hearing.

6. The case came up for hearing on 26<sup>th</sup> July, 2016 and once again the prosecution did not have witnesses and sought an adjournment. *Mr Osango* opposed the application for adjournment and pointed out the numerous adjournments granted to the prosecution and the fact that no single witness has been presented since the accused took plea in July, 2014.

7. The application for adjournment was declined and the prosecution ordered to proceed. *Mr Oroni* could not obviously proceed in the absence of witnesses and closed his case, hence this ruling.

8. The accused was arraigned before court on 15<sup>th</sup> July, 2014. By 26<sup>th</sup> July, 2016 he had spent two years in remand yet his trial was yet to begin. Despite the prosecution having been accorded an opportunity to present witnesses through numerous adjournments, it did not do so. No proper reasons were given why it could not present witnesses, or when it was sure of presenting witnesses.

9. Since the prosecution failed to procure witnesses to prove its case as required by law, I find that the prosecution failed to establish a case against the accused and for that reason, the accused has no case to answer under *section 306(1)* of the Criminal Procedure Code. Consequently I acquit the accused and order that he be set at liberty forthwith unless otherwise lawfully held.

**Dated and delivered at Kakamega this 8<sup>th</sup> day of September, 2016.**

**E.C. MWITA**

**JUDGE**