

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL CASE NO. 49 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

NEHEMIA CHELIMO.....1ST ACCUSED

ANTHONY KIPTOON.....2ND ACCUSED

RULING

The two accused persons **NEHEMIA CHELIMO** (1st accused) and **ANTHONY KIPTOON** were both on 7th May 2013 arraigned in court on a charge of **MURDER CONTRARY TO SECTION 203 as read with SECTION 204 OF THE PENAL CODE.**

In the initial stages it was indicated to the court that plea-bargain agreement was being negotiated between the accused persons and the office of the DPP. This plea-bargain agreement was never reached despite the court adjourning the matter several times to allow for relevant negotiations. From May 2013 to July 2015 the song was that the plea-bargain agreement was being finalized. As stated earlier no such agreement ever materialized.

Finally after numerous mentions the court set down the hearing for 4th May, 2016. On that date the State had no witness in court. Given the age of the matter, the State were given a last adjournment and hearing was set down for 18th August, 2016.

Once again despite having had three (3) months to secure attendance of witnesses the State did not have any witness available in court.

It is apparent that there was no effort made to prosecute this matter. From May 2013 to August 2016 a period of over three (3) years not a single witness was presented to court. No evidence in support of the murder charge was adduced by the prosecution. A case cannot continue to pend in court indefinitely. Clearly no *prima facie* case was established. The prosecution dismally failed in their mandate. I enter a verdict of '**Not Guilty**' and I acquit both accused persons of this charge of murder. Each accused is to be set at liberty unless otherwise lawfully held.

Dated in Nakuru this 7th day of October, 2016.

Mr. Gatonye for both accuseds

Mr. Chigiti for State.

Maureen Odera

Judge

7/10/2016