

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

HCCR NO. 32 OF 2014

(FORMERLY KISII HIGH COURT HCCR NO. 69 OF 2012)

BETWEEN

REPUBLICPROSECUTION

AND

SETH OTIENO OLOO ACCUSED

RULING

Seth Otieno Oloo is charged with the murder of ***Anjelah Aloo*** in that between 1st March 2012 and 19th April, 2012, he murdered the deceased at Sori Sub-location, Nyatike District within Migori County.

When the matter came up for hearing today, learned counsel for the prosecution applied for an adjournment on the ground that she had no witnesses. She informed the court that the Commanding Officer, Macalder Police Station made efforts to trace the witnesses but they had left their usual place of residence.

Naturally, the application for adjournment was opposed by defence counsel who noted that this is not the first time that prosecution witnesses have not been available. He urged the court to reject the application for adjournment as his client was entitled to a fair trial which was to commence with a reasonable time.

Learned counsel for the prosecution then applied to withdraw the matter which defence counsel did not oppose. In granting leave to the prosecution to withdraw the case, I have considered the fact that the accused has been waiting in custody since he was first arraigned on 27th April, 2012. At all times and this matter has come up for hearing the prosecution has not brought any witnesses to court. I am not convinced that the officers at Macalder Police Station have given sufficient reason as to why the witnesses could not be located.

In the circumstances, I grant leave for the prosecution to withdraw the case. In the meantime, the accused is informed that he may be charged for the same offence, if witnesses are found or become available.

The accused is set free unless otherwise lawfully held.

Dated, signed and delivered in Open Court at Migori this 20th day of July, 2015

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D. S. MAJANJA

JUDGE