



IN THE HIGH COURT
AT MIGORI
CRIMINAL CASE NO. 13 OF 2014
(FORMERLY KISII HCCR NO. 108 OF 2010)

BETWEEN

REPUBLIC.....PROSECUTOR

AND

MICHAEL OYUGI NGANYA alias MARK.....ACCUSED

R U L I N G

1. MICHAEL OYUGI NGANYA alias MARK (“the accused”) was charged with the murder **MISHEL AKOTH** (“the deceased”). This Court was informed on 15th November 2010 that he murdered the deceased between 20th October 2010 and 1st November 2010 at Kanganya Village, Kawere IIB Sub-location of Migori County.

2. The deceased was a two year old child who had come to visit her great grandmother with her mother. On the evening of 26th October 2010 she was playing with the other children. Celestine Achieng (PW 5) testified that she was playing with the deceased and other children. The deceased’s mother came looking for her and the deceased followed her. She stated that although they told her to come back, the deceased continued following her mother while crying. She further testified that the deceased’s mother did not know she was being followed. The deceased did not come back.

3. Rose Anjelin Otieno Ogada (PW 1), the deceased’s great grandmother, recalled that on the evening of 26th October 2010, the deceased was playing with other children outside. When she went to give the child a sweater, the child was not with the other children. Together with the deceased’s mother and other relatives, they searched for the deceased in the neighbourhood but she could not be found. One of the people PW 1 informed was Godfrey Naaman Ang’ada (PW 6), her brother in law. He assisted in looking for the deceased that night. On the next day he reported to the Assistant Chief, Charles Omondi Migoya (PW 2), that the deceased was missing. He too continued the search for her. He also instructed the villagers to look for the deceased. He testified that an alert was also issued on Ramogi Radio. The search continued until 1st November 2010 when the deceased’s body was found.

4. On 1st November 2010 at about 6.00pm, Mary Agutu (PW 3) was on the way home. From a distance she could see the two girls fetching water and on the other side there were dogs playing with something she could not identify. At that point she also saw a man coming close with a wheelbarrow with two jerricans for carrying water. She identified the man as the accused. She drew his attention to what the dogs were doing and asked him to go there. They both went to the place and found that it was a partially decomposed body of a child.

5. One of the children at the swamp, Imelda Achieng (PW 4), recognized the child as deceased whom they had been looking for. She confirmed that while she was at the swamp, she saw PW 3 coming towards the swamp and also the accused coming down with the wheelbarrow with jerricans. As she was fetching water, she was called by PW 3 to come and see what the dogs were playing with. When she went there, she identified the deceased. She further testified that PW 3 called the accused while she was there. She left immediately to go inform the deceased's family that the body had been found.

6. PW 2 testified that after the body of the deceased was recovered, she was buried by the family. However, the police came and exhumed the body on 5th November 2010 and caused the post-mortem to be conducted. PW 2 further testified that the accused's name was mentioned by people and he was arrested on 8th November 2010 while he was in his father's house which is next to PW 1's house.

7. The prosecution closed its case after 6 witnesses had testified. I am now required to determine whether the accused should be placed on his defence. What the prosecution was required to establish is that the accused is the one who caused the death of the deceased or had something to do with it. All the prosecution witnesses did not put the accused at the place where the child is said to have disappeared. No one saw him prior to finding the deceased's body at the swamp. PW 3 and PW 4 confirmed that he arrived at the swamp just before the deceased's body was discovered. All the witnesses knew him as a neighbour while PW 2 testified that his name was mentioned in the gathering of villagers had after the deceased's body had been discovered. Indeed no motive, in relation to the deceased's death, could be ascribed to the accused. All in all the principal witnesses did not connect the accused to the deceased or her death. The evidence therefore falls far short of the threshold required to put him on his defence.

8. Under **section 306(1)** of the *Criminal Procedure Code (Chapter 75 of Laws of Kenya)*, I am required to enter a verdict of Not Guilty which I hereby do.

9. The accused is acquitted. He is set free unless otherwise lawfully held.

DATED and DELIVERED at MIGORI this 14th day of July 2015.

D.S. MAJANJA

JUDGE

Mr Abisai instructed by Abisai and Company Advocates for the accused.

Ms Owenga, Principal Prosecution Counsel, instructed by the Office of the Director of Public Prosecutions for the State.