

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

CRIMINAL CASE NO. 45 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

STEPHEN JUMA ADOYO.....ACCUSED

RULING

1. Stephen Juma Adoyo is charged with an 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 28th day of September, 2018 at Kothidha village, East Kanyada Location within Homa Bay County, murdered Alice Atieno Adoyo.
3. None of the witnesses who testified linked the accused to the offence. The mother of the deceased (PW1) created an impression that the accused and the deceased were not in a harmonious marriage. During cross examination she testified that at the time of death, her daughter was living with a workmate and the accused was living elsewhere.
4. Margaret Arthur Otonde (PW4) testified that where the body of the deceased was found were some shopping and a bag of the deceased. None of the items could link the accused to the offence.
5. After the analysis of the evidence on record, the question is whether the prosecution has establish a *prima facie case* against the accused person. In the **Black's Law Dictionary, 10th Edition** *prima facie case* is defined as follows:

***Prima facie case.* (1805) I. The establishment of a legally required rebuttable presumption. 2. A party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor.**

6. The Court of appeal in the case of **Ramanlal Trambaklal Bhatt v. R [1957] E.A 332 at 334 and 335**, defined *prima facie case* as follows:

It may not be easy to define what is meant by a "prima facie case", but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.

7. Article 50 (2) (i) of the Constitution of Kenya provides:

(2) Every accused person has the right to a fair trial, which includes the right—

(i) to remain silent, and not to testify during the proceedings;

In the instant case, if the accused person opts to exercise his constitutional right hereinabove stated, I cannot enter a conviction based on the evidence on record. This therefore means that the prosecution has failed to establish a *prima facie case* against him. I accordingly acquit him of the offence of murder under section 306 (1) of the Criminal Procedure Code. He is set at liberty unless if otherwise lawfully held.

DELIVERED AND SIGNED AT HOMA BAY THIS 28TH DAY OF FEBRUARY, 2022

KIARIE WAWERU KIARIE

JUDGE