



**State v Mband & another (Criminal Case E015 of 2022)
[2022] KEHC 14231 (KLR) (24 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14231 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E015 OF 2022
RE ABURILI, J
OCTOBER 24, 2022**

BETWEEN

STATE PROSECUTION

AND

MAURICE OWINO MBAND 1ST ACCUSED

BENARD OTIENO MBAND 2ND ACCUSED

RULING

1. The accused persons herein are Maurice Owino Mband and Benard Otieno Mband. They are blood brothers. They are jointly charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code.
2. Particulars of the offence as per the information dated 19th April 2022 are that on the 14th Day of April 2022 at Lolwe village, Yiro Sub location, South Ugunja location, Ugunja Sub County within Siaya County, they jointly murdered one George Ouma Mband.
3. The accused took plea and denied the offence, after they were examined by a psychiatrist who established they are fit to stand trial and to take the plea.
4. The prosecution has called 7 witnesses who have testified and closed their case.
5. The question now is whether the accused persons have a case to answer. For the court to answer that question in the affirmative, it must be established that prima facie, the two accused persons or any one of them committed the offence whose elements are set out in Section 203 and 206 of the Penal Code.
6. However, at this stage, the prosecution is not expected to prove their case against the accused persons beyond reasonable doubt.



7. All that the prosecution is expected to do is to establish a prima facie case against the accused persons. A prima facie case is not necessarily one that must succeed. This is because the accused persons remain innocent until proven guilty and they enjoy the right to remain silent and not challenge any evidence or give self-incriminating evidence. It is upon the Prosecution to prove the guilt of the accused persons beyond reasonable doubt.
8. Having considered the evidence adduced by the 7 prosecution witnesses, I am persuaded that a prima facie case has been established against the accused persons to warrant them to be placed on their defence. Delving into the depths of that evidence would prejudice the accused persons.
9. Accordingly, I find that the 2 accused persons herein Maurice Owino Mband and Benard Otieno have a case to answer for the Murder of George Ouma Mband. They are accordingly placed on their respective defences.
10. The provisions of Section 306(2) of the *Criminal Procedure Code* and their rights under Article 50(2)(i)(j)(k) of *the Constitution* are hereby explained to them, in the Dholuo language which they understand by choice.
11. I so order.

DATED, SIGNED AND DELIVERED AT SIAYA, THIS 24TH DAY OF OCTOBER 2022

R.E. ABURILI

JUDGE

