



REPUBLIC OF KENYA



**Republic v Oluoch (Criminal Case 21 of 2020)
[2022] KEHC 15802 (KLR) (30 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15802 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CRIMINAL CASE 21 OF 2020**

**KW KIARIE, J
NOVEMBER 30, 2022**

BETWEEN

REPUBLIC PROSECUTOR

AND

BRIGHTONE OKOTH OLUOCH ACCUSED

RULING

1. Brightone Okoth Oluoch 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 24th day of March, 2020, at Nyang'nyiela Trading Centre, Kochich Sub location, in Rachuonyo South Sub County of Homa Bay County, murdered Edwin Omondi Odiembo.
3. Prior to his death, the deceased herein was working at Nyang'nyiela sub county hospital. He was beaten on 24th March 2020 and on 31st March 2020.
4. On 24th March 2020 he went to the hospital where he was working with an injury. He attributed it to an accident. This is what Hesbon Omondi Abonyo (PW3) testified to. A day after the incident he informed PW3 that the injury was as a result of an assault.
5. Emmanuel Okinyi Osano (PW2) another colleague of the deceased testified that the deceased sought treatment at the facility on 31st March 2020 at about 3.20 p.m. He gave a history of assault by unknown person.
6. There was no disclosure to these two colleagues the identity of the culprit.
7. When corporal Mark Lipale (PW4) testified that the accused and the deceased fought over a girlfriend, one is left wondering where he got this information from. Two witnesses who were not called to testify



namely Perez Adoyo and Tom Oluoch recorded in their statements that they were told the cause of the fight but even they, did not indicate that the accused was involved.

8. Had the prosecution called these two witnesses, their evidence would have amounted to inadmissible hearsay.

9. 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.

10. 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.

11. 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 opts to exercise his constitutional right hereinabove stated, I cannot convict him based on the evidence on record. This therefore means that the prosecution has not established a *prima facie* case against him. I accordingly acquit him of the offence of murder under section 306 (1) of the *Criminal Procedure Code*. Each is set at liberty unless if otherwise lawfully held.

DELIVERED AND SIGNED AT HOMA BAY THIS 30TH DAY OF NOVEMBER, 2022

KIARIE WAWERU KIARIE

JUDGE

