



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

HCCRC NO. 5 OF 2019

PROSECUTOR..... REPUBLIC

VERSUS

PATRICK OWINO OWEKE..... ACCUSED

RULING

The accused, **PATRICK OWINO OWEKE**, was charged with the offence of **Murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**. He is alleged to have murdered **FESTUS OMWAGA MIWIRU** on 10th October 2017.

1. The prosecution has called 5 witnesses.
2. At this stage, I am required to determine whether or not the accused has a case to answer.
3. From the evidence on record, it is clear that **FESTUS OMWAGA MIWIRU** is dead. The cause of death was described as follows, by Dr. Omollo, who is the Medical Officer who conducted the post-mortem examination on the body of the deceased;

“Intraperitoneal haemorrhage from Raptured Spleen secondary to Blunt abdominal trauma from assault.”

4. In effect, the deceased did not succumb to death due to natural causes: he had been assaulted.
5. None of the prosecution witnesses saw when the deceased was being assaulted.
6. The basis of the decision to arrest the accused and to charge him with the offence was a statement which the deceased had made to **PW3** and also to **PW1**.
7. Those 2 witnesses testified that the deceased had told them, separately, that he had been assaulted by the accused.
8. The accused has submitted that although Festus was dead, the question;

“..... as to whether the accused committed the unlawful act causing the death of the death of the deceased, the same is controverted.”

9. At this stage, the evidence adduced by the prosecution has not yet been controverted as alleged or at all.
10. The evidence points at a Dying Declaration which was made by the deceased. As the said declaration pointed a finger at the accused, I find that if the accused failed to offer an explanation, there is a possibility that a conviction may ensue.
11. In other words, the prosecution has proved a prima facie case against the accused.
12. This finding is premised on the Dying Declaration and the corroboration which is founded upon the post mortem report.
13. Accordingly, I find that the accused has a case to answer.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 28TH DAY OF APRIL 2021

FRED A. OCHIENG

JUDGE