



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**HCCRC NO. 9 OF 2019**

**PROSECUTOR.....REPUBLIC**

**VERSUS**

**SAMWEL ONYANGO OTIENO.....ACCUSED**

**RULING**

The accused, **SAMWEL ONYANGO OTIENO**, was charged with the offence of **Murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**.

1. He pleaded “*Not Guilty*” to the charge.
2. The Prosecution has called 7 witnesses.
3. The evidence shows that the victim, **ELSA ALUOCH**, is dead. The doctor who performed the post-mortem examination on the body of the victim, formed the professional opinion that the cause of death was Haemorrhagic Shock from penetrative (stab) wounds due to assault by a sharp object.
4. The prosecution has shown, on a prima facie basis, that the last person to be seen with the victim on the night before her body was recovered in Sondu Miriu River, was the accused.
5. At the time when the Accused was last seen, he was carrying the deceased on his shoulders, heading towards his home.
6. In the circumstance, I find that unless the Accused tenders evidence which might explain what transpired, there is a possibility that he might be held culpable for the offence.
7. Therefore, I find that the Accused has a case to answer.
8. He is informed that he is not obliged to say anything. If he chooses to remain silent, the Court would proceed to consider the evidence on record, and make a determination, after giving the prosecution and the accused an opportunity for submissions.
9. The Accused was further informed that he was entitled to choose to give either unsworn evidence or sworn evidence.
10. Should he give sworn evidence, the Accused would be cross-examined by the Prosecution.
11. Finally, the Accused was informed that he has the right to call witnesses, who would support his case. The said witnesses would be cross-examined by the prosecution, after each of them will have given his or her evidence-in-chief.

**DATED, SIGNED AND DELIVERED AT KISUMU**

**THIS 23RD DAY OF NOVEMBER 2021**

**FRED A. OCHIENG**

**JUDGE**