



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL CASE NO. 3 OF 2019 [MURDER]

STATE.....PROSECUTION

VERSUS

DANIEL OMONDI OLOO.....ACCUSED

RULING ON CASE TO ANSWER

1. The accused person **Daniel Omondi Oloo** is charged with the offence of Murder contrary to Section 203 as read with the Section 204 of the Penal Code.
2. Particulars are that on 20th July 2018 at Wagwer village Mulunga sub-location, Gem Sub-County within Siaya County, jointly with others not before court murdered George Otieno Onyango.
3. The accused pleaded not guilty to the charge on 3/4/2019 and the Prosecution called 9 witnesses and closed its case on 18/2/2020. The accused person is on bond. The matter was slated for submissions on no case to answer on 23/3/2020 but the covid-19 situation set in hence the delay.
4. At the close of the prosecution, Mr. Ooro counsel for the accused person filed written submissions urging this court to acquit the accused person on the ground that the prosecution had failed to establish a prima facie case against the accused person to warrant the accused to be placed on his defence.
5. Counsel submitted that the evidence so far adduced by the prosecution witnesses is not enough to warrant the accused to be placed on his defence.
6. He submitted that there was no evidence linking the accused person to the commission of the offence of murder as none of the witnesses called claimed to have been at or was an eye witness to the incident leading to these proceedings.
7. According to Mr. Ooro, there was also lack of proper investigations in the alleged murder as the only witness purporting to link the accused and the alleged offence is PW8 IP John Njuguna Warui, the investigating officer who also recorded witness statements. Further, that no other witness corroborated the evidence of PW8.
8. It was further submitted that albeit there is no statute of limitation against an accused person in criminal cases, but that in this case, the offence was committed on 20/7/2018 yet the accused was charged almost a year after the occurrence of the offence.
9. The Prosecution did not submit.
10. Having considered all the evidence adduced by the Prosecution witnesses as a whole, and the submissions dated 23/3/2020 by Mr. Edwin Ooro Advocate on no case to answer, it is trite law that the onus of proof lies on the Prosecution throughout the trial to prove their case against the accused person beyond reasonable doubt and that burden does not shift to the accused person at any stage of the proceedings.
11. At this stage, however, the Prosecution is not expected to prove their case beyond reasonable doubt but to establish a prima facie case that warrants the accused person being placed on his defence. That in itself does not mean that the court is shifting the burden of proof to the accused person as he retains his innocence until the conclusion of the trial and even if he is placed on his defence, he may elect to remain silent and that cannot be used against him.
12. Having said that, where the court, after considering all the Prosecution evidence on record, is of the view that the accused person has a case to answer, it should not delve into the depths of the evidence on whether such evidence is sufficient or not or whether there were proper investigations in the case as that would prejudice the accused person's right to be presumed innocent until proven guilty.

13. That being the case, and having analyzed the evidence adduced by the Prosecution in this case, I am satisfied that the prosecution have established a prima facie case to warrant the accused person being placed on his defence.

14. Accordingly, the accused person Daniel Oloo is hereby placed on his defence and the provisions of Section 306 (2) of the Criminal Procedure Code and Article 50(2) of the Constitution are hereby complied with and explained to the accused on his rights.

15. Orders accordingly.

Dated, signed and Delivered at Siaya, this 22nd Day of June, 2020.

R.E. ABURILI

JUDGE