



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

CRIMINAL CASE NO. 8 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

1. DENNIS OGOLLA OTSIENO

2. CHRISPINUS ADALA OTSIENO

3. METRINE NAFULA WEPUKHULU.....ACCUSED

RULING

1. Dennis Ogolla Otsieno, Chrispinus Adala Otsieno and Metrine Nafula Wepukhulu are 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 between the 4<sup>th</sup> day of May 2019 and 7<sup>th</sup> May 2019, at Bujumba village Bujumba Location of Butula sub County within Busia County, jointly with others not before court murdered Gentah Heldah Adhiambo.

3. Corporal Reuben Mwaniki (PW8) arrested and charged Chrispinus Adala Otsieno (accused2) because of the information he received that he used to share the house where the deceased was presumably killed with his brother Dennis Ogolla Otsieno (accused1). The evidence of Brian Otieno (PW1) however was that he (accused2) was not present when the deceased went to the house. There was no other evidence that connected him with the offence.

4. Metrine Nafula Wepukhulu (accused 3) was charged with the offence for she was the mother of accused1 and accused2 according to the evidence of Corporal Reuben Mwaniki (PW8).

5. The approach by Corporal Reuben Mwaniki (PW8) in respect of second and third accused persons shows that he does not appreciate the basic requirements of criminal liability. If he does, probably he wanted to prove that PC Danston Wangila (PW7) did not do his investigations properly.

6. Did the prosecution establish a *prima facie case*? 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.

7. 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 is 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.**

8. 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 second and the third accused persons opt to exercise their constitutional right hereinabove stated, I cannot enter a conviction based on the evidence on record. This therefore means that the prosecution has failed to establish a prima facie case against both of them. I accordingly acquit them of the offence of murder under section 306 (1) of the Criminal Procedure Code.

9. I however find that the prosecution has established a prima facie case against the first accused. He is put on his defence under section 306 (2) of the Criminal Procedure Code.

**DELIVERED and SIGNED at BUSIA this 4<sup>th</sup> day of August, 2020**

**KIARIE WAWERU KIARIE**

**JUDGE**