



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT HOMA BAY**

**CRIMINAL CASE NO.4 OF 2014**

**REPUBLIC ..... COMPLAINANT**

**VERSUS**

**BENARD ACHOLLA UGESA ..... ACCUSED**

**RULING**

[1] The charge facing the accused, **BENARD ACHOLLA UGESA** is that of murder, contrary to **Section 203** as read with **Section 204** of the **Penal Code**.

The particulars are that on the 16<sup>th</sup> January 2014 at Miria village, Seka sub location in Suba District within Homa Bay County, jointly with others not before court murdered Faith Achieng. The prosecution closed its case having called a total of five witnesses including **POLYCAP MASARA KIBOYE** (PW1), **ANDREW OGUTU KIBOYE** (PW2), **ANDREW OMBISA** (PW3), **JOHN OLEWE MASARA** (PW4) and **MARY ACHIENG OGUYA** (PW5).

[2] These witnesses were expected to adduce evidence, strong and credible enough, to establish a prima facie case warranting that the accused be placed on his defence. Such a case is one in which a reasonable court properly directing its mind to the law and evidence before it would convict if no explanation is offered by the defence (See, **R.T. BHATT –vs- REPUBLIC [1957] EA 332**).

A mere scintilla of evidence nor any amount of worthless discredited evidence can never be sufficient enough to establish a **prima facie** case and hence, the material ingredients of any one charge facing an accused person.

[3] Murder, occurs where a person who of malice aforethought causes death of another person by an unlawful act or omission (see, **Section 203** of the **Penal Code**).

This is the charge facing the accused in that, he allegedly caused the death of the deceased **Faith Achieng**.

At most, the evidence led by the witnesses aforementioned indicated that the deceased had been “**inherited**” by the accused in keeping with their cultural traditions and on the material date the accused implied that she was unfaithful and had infected him with a disease which was incurable. He allegedly dragged her from their house while she was naked prior to accusing her. He thereafter proceeded to assault and injure her without bothering to take her to hospital even after dragging her along a stony ground surface. She was taken to hospital by villagers but passed away while undergoing treatment. She allegedly succumbed to the injuries occasioned to her by the accused.

[4] Apparently, the accused was arrested and charged for the death of the deceased on the basis of the medical findings resulting from an autopsy (postmortem) on the body of the deceased witnessed by **JOHN OLEWE (PW4)** and performed by a Dr. Ojwang. However, there was no evidence of the investigating officer to shed light on how the accused was arrested and for what reasons. There was also no evidence by the doctor to establish the cause of death and more particularly if it was as a result of a criminal act of assault committed against the deceased.

In the circumstances, the evidence so far adduced against the accused remains insufficient to establish the material ingredients of the charge and the accused’s culpability in that regard.

Therefore, placing the accused on his defence on the basis of such evidence would be tantamount to asking him to fill the gaps left wide open by the prosecution.

[5] It was unfortunate that a domestic brawl between the accused and the deceased led to the death of the deceased, but the duty to set out a “**prima facie**” case to warrant that the accused be placed on his defence was never discharged by the prosecution.

It is therefore the ultimate finding of this court that the accused has no case to answer and is hereby acquitted.

**J.R. KARANJAH**

**JUDGE**

**23.01.2019**

**[Read and signed this 23<sup>rd</sup> day of January, 2019]**

**[In the presence of M/s Ongeti for Republic and M/s Adoyo**

**for accused]**