



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL CASE NO. 72 OF 2015**

**REPUBLIC.....STATE**

**VERSUS**

**NICHOLAS ATONYE LUSALA.....ACCUSED**

**RULING ON NO CASE TO ANSWER**

1. The Accused Person, Nicholas Atonye Lusala, is facing a charge of murder contrary to Section 203 as read with Section 204 of the Penal Code. It is alleged that on the 15<sup>th</sup> day of May, 2011 at Ahero trading center in Nakuru North District within Nakuru County, murdered James Otieno Osedi (“Deceased”).
2. The Prosecution called five witnesses. The narrative emerging from the Prosecution case is that the Accused Person attacked the Deceased at a bar after he suspected that the Deceased’s friend was having an affair with his (Accused Person’s) girlfriend.
3. At this point in the case, the Court is required to make a finding whether the Prosecution has presented sufficient evidence to require the Accused Person to be put on his defence or whether the case should be stopped at this point. The test to be utilized is the famous one stated in *Bhatt –vs- R [1957] EA 332*: whether, as a matter of law – without taking any conclusive view of the credibility and probative value of the evidence presented – the Prosecution has adduced *reasonable sufficient evidence* of the matter in respect of which it has the burden of proof. Reasonable sufficient evidence is one which a reasonable tribunal could convict.
4. In my view, the Prosecution has placed enough material to make this a fit case to require the Accused Person to respond to the evidence adduced.
5. **Consequently, the Court finds that the Accused Person has a case to answer and puts him on his defence. The case shall be set down for defence hearing.**

**Delivered at Nakuru this 28<sup>th</sup> day of March, 2019.**

**JOEL NGUGI**

**JUDGE**