



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL DIVISION

CRIMINAL CASE NO. 1 OF 2017

REPUBLIC.....PROSECUTION

VERSUS

DAVID ABULU ATOLWA.....ACCUSED

CORAM: LADY JUSTICE RUTH N. SITATI

RULING

The Charge

1. The accused person herein DAVID OBULU ATOLWA was arraigned before this court on 15th January 2017 to face one count of **murder contrary to section 203 as read with section 204 of the Penal Code**. The particulars of the offence are that on the 31st day of December 2016 at Ebusiratsi Village, Ebusiratsi Sub-location Irumbi Location in Emuhaya Sub-County within Vihiga County, he murdered ASTON ONGATI CHARLES. The accused person denied the allegations.

The Prosecution's case

2. The prosecution called 5 witnesses, namely Benina John Etale, PW1, Josah Omeko Karachi PW2, Evans Maoga Ohuya, PW3, Rufusi Angote Kusindi, PW4 and number 87875 CPL Jacob Birgen who was PW5. PW5 was also the Investigating Officer in the case. He produced the post mortem report concerning the body of the deceased. According to the Post mortem report, the deceased died as a result of severe head injury secondary to blunt force trauma following assault.

Issues for Determination and Conclusion

3. The issue for determination is whether the prosecution has established a prima facie case against the accused person to warrant his being placed on his defence. What amounts to a prima facie case was determined by the Court of Appeal for Eastern Africa in the case **of Bhatt versus Rex [1957] EA 332**.

4. Applying those principles to the evidence on record, I am satisfied that the prosecution has established a prima facie case against the accused person which now requires him to defend himself against the allegation that on the 31st day of December 2016, he murdered Aston Ongati Charles.

5. In defending himself, the accused person may give sworn or unsworn evidence or elect to remain silent and let the court decide the case on the evidence that is before it. If he gives sworn evidence, he may be asked questions both by the court and the prosecution. No questions will be put to him if he elects to give unsworn evidence. Except where the accused elects to remain silent he is entitled to call witness in his defence.

6. I now call upon the accused person to indicate to the court how he intends to defend himself

7. It is so ordered.

Ruling written and signed at Kapenguria

R. N. SITATI

JUDGE

Ruling delivered, dated and countersigned in open court at Kakamega on this 25th October, 2019

WILLIAM M. MUSYOKA

JUDGE

Ms Rotich for state/prosecutor

Accused present in person

Eric - court assistant