



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**CRIMINAL CASE NO. 12 OF 2015**

**REPUBLIC.....DIRECTOR OF PUBLIC PROSECUTIONS**

**VERSUS**

**JOAKIM ODWOR OKAL.....ACCUSED**

**RULING**

1. When this matter came up for hearing on 16<sup>th</sup> October 2019, I declined to allow an application for adjournment by the state, and the state closed its case.

2. The last time the matter proceeded was 9<sup>th</sup> February 2016, when PW3 testified. PW1 and PW2 had testified on 18<sup>th</sup> November 2015. Thereafter the matter came up several times, and was adjourned for various reasons. On 10<sup>th</sup> May 2016, it was because the state witnesses were not in court. On 14<sup>th</sup> December 2016, it was because there were no witnesses and the advocate for the accused was absent. On 19<sup>th</sup> June 2017, the matter could not be reached. On 20<sup>th</sup> July 2017, there was no police file. On 11<sup>th</sup> June 2018, the state did not have the police file. On 18<sup>th</sup> July 2018, again there was no police file and witnesses were not in court. On 21<sup>st</sup> November 2018, it was the same story, no police file and no witnesses. It was the same story on 5<sup>th</sup> March 2019 and 21<sup>st</sup> May 2019

3. I have gone through the record with a view of determining whether the prosecution has established a *prima facie* case, sufficient to have the accused person put on his defence.

4. I have guidance from *Ramanlal Trambaklal Bhatt vs. R* (1957) EA 332, where the court describes a *prima facie* case as one in which a reasonable tribunal, properly directing its mind to the law and the evidence, could convict, if no explanation was offered by the defence. *Director of Public Prosecutions vs. Geoffrey Mukonza Mwangangi* [2018] eKLR and *Frankline Muthoka Mumo vs. Republic* [2019] eKLR are in similar vein.

5. I have gone through the record before me, principally the testimonies of PW1, PW2 and PW3, and I am persuaded that the prosecution has adduced evidence which establishes a *prima facie* case against the accused person, and I hereby find that the accused has a case to answer, and I shall, accordingly, be put him on his defence.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 29<sup>TH</sup> DAY OF NOVEMBER, 2019**

**W. MUSYOKA**

**JUDGE**