

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CRIMINAL CASE NO. 4 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

KENNEDY WESONGA OKUMBE.....ACCUSED

RULING

1. **Kennedy Wesonga Okumbe** is 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 on the night of 20th and 21st day of January, 2019 at **Emalomba “A”** village **Butula** Sub-county, in **Busia** County, jointly with others not before court, murdered **Ramadhan Abdallah**.
3. At the close of the prosecution case, I was urged to find that the prosecution had failed to establish a prima facie case against any of the accused person. The Court of Appeal in the case of **Ramanlal Trambaklal Bhatt vs. Republic (1957) E.A. 332 at 335** defined a prima facie case as follows:

It 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.

In the instant case, this is what I will endeavour to find if the prosecution established.

4. One of the witnesses who purported to have identified the accused stepping on the head of the deceased was Andrew Mageri (PW3). He also claimed to have seen **Gichuru** at the scene with a machete. His statement to the police however, was that when the accused and **Gichuru** saw him, they dashed into darkness. This witness does not paint a picture of a reliable witness. In the case of **Ndungu Kimanyi vs. Republic [1979] KLR 283**, the Court of Appeal (Madan, Miller and Potter JJA) held:

The witness in a criminal case upon whose evidence it is proposed to rely should not create an impression in the mind of the court that he is not a straightforward person, or raise a suspicion about his trustworthiness, or do (or say) something which indicates that he is a person of doubtful integrity, and therefore an unreliable witness which makes it unsafe to accept his evidence.

5. The other witness is George Odinga Rapando (PW4) who testified that he is also locally known as **Gichuru**. He said that he found the accused stepping on the ribs of the deceased. During cross examination, he conceded that in his statement to the police he never mentioned the accused and did not record that he saw anybody stepping on the body of the deceased. Just like Andrew Mageri (PW3), he is unreliable witness.
6. If the accused person in this case opts to exercise his Constitutional right to remain silent, as provided for under Article 50 (2) (i) of the Constitution, no reasonable tribunal can convict from the evidence on record. This therefore, means that no prima facie case has been established against him. I accordingly acquit him under section 306 (1) of the Criminal Procedure Code and set him free unless if otherwise lawfully held.

DELIVERED and SIGNED at BUSIA this 27th day of November, 2019

KIARIE WAWERU KIARIE

JUDGE