



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 49 OF 2013**

**REPUBLIC..... PROSECUTOR**

**VERSUS**

**ERICK MASEGA ALIAS MADIABA..... ACCUSED**

**RULING ON A CASE TO ANSWER**

1. The accused persons herein, **ERICK MASEGA alias MADIABA** was charged with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**. The particulars of the offence were that on the night of 27<sup>th</sup> and 28<sup>th</sup> March 2013 at unknown time at Gesoni Sub-location in Kisii Central District within Kisii County in the Republic of Kenya murdered **ISAAC MAIRURA MOCHOGE**.

2. A total of 3 witnesses testified in support of the prosecution's case after which the prosecution closed its case thereby setting the stage for a ruling on a case to answer. At this stage, the court is required to decide whether the evidence tendered by the prosecution is worthy of credit or whether, if believed, is weighty enough to prove the case concussively. (**See R vs Jagiran M. Patel and Others 1, TLR. 85**).

3. A summary of the evidence tendered by the prosecution witnesses was as follows:

4. PW1 Anna Moraa Mairura was the widow of the deceased testified that she was on 27<sup>th</sup> March 2013 in the house with the deceased, when the accused, who is her son, came shouting and asking for proceeds from the sale of land. It turns out that the deceased had sold his land to 5 people and the accused demanded a share of the land sale proceeds. The accused was informed that there was no money and he started a fight with the deceased. PW1 stated that she ran away and he went to spend the night at the home of one Moseti only for her to return to her home the next morning where she found the deceased lying dead on bed.

5. **PW2 Charles Ondieki** heard screams emanating from the deceased's home on the morning of 28<sup>th</sup> March 2013. He went to the deceased home and found him lying dead in bed.

6. **PW3** was No. 87583 P.C. Gilbert Koech. He investigated the case and charged the accused with the offence of murder. He produced the post mortem report as Pexhibit 1 and stated that the cause of death was established to be massive intra-cranial and intra abdominal haemorrhage with a tear of the right radial artery. He stated that the deceased was arrested 1 month after the death of the deceased as he went into hiding at Suneka Trading Center.

7. From the above summary of the prosecution's case, I am satisfied, without saying much at this stage, that the prosecution has established a prima facie case against the accused to warrant his being put on his defence. Accordingly, I hereby place the accused on his defence.

**Delivered, dated and signed in at Kisii on 19<sup>th</sup> of March 2018.**

**W.A. OKWANY**

**JUDGE**

**In the presence of:**

- Mr. Otieno for the State
- Mr. Okenye for the Accused
- Omwoyo court clerk