

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CRIMINAL CASE NO. 11 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

PAUL MUKHEBI OCHUDI.....ACCUSED

RULING

1. At the close of the prosecution case I was urged to make a finding that the prosecution did not establish a prima facie case against the accused person to warrant him being placed on his defence. The prosecution on the other hand contended that it had discharged its burden.
2. What is a prima facie case? In the case of **RAMANLAL T. BHAT vs. R [1957] E.A 332, 335** the Court of Appeal for Eastern Africa in defining a prima facie case said:

A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence. It is true, as Wilson, J., said, that the court is not required at that stage to decide finally whether the evidence is worthy of credit, or whether if believed it is weighty enough to prove the case conclusively: that final determination can only properly be made when the case for the defence has been heard. 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. [Emphasis added]

3. In the instant case the evidence against the accused is that of **Fostine Okello (PW1)** the wife of the deceased and her daughter **Miriam Okello (PW2)**. The gist of their evidence is that the accused used a stick to beat the deceased on the back and that he kicked him once on the abdomen. However according to the evidence of **Dr. Sande Kahindi Charo (PW3)** who performed the post mortem, the cause of death of the deceased was cardiac arrest in a patient who had been ill and had chronic lung disease.
4. There was no evidence that was adduced to connect the alleged assault and the findings of **Dr. Charo (PW3)**. Article 50 (2) (i) of the Constitution of Kenya provides as follows:

Every accused person has the right to a fair trial, which includes the right—

(i) to remain silent, and not to testify during the proceedings;

If the accused opts to exercise this right, then no conviction can be based on the evidence on record.

5. I accordingly find that no prima facie case has been established by the prosecution to warrant him to be placed on his defence. I 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 29th day of May, 2018

KIARIE WAWERU KIARIE

JUDGE