



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**CRIMINAL CASE NO. 115 OF 2010**

REPUBLIC.....STATE

VERSUS

LEMOIS OLE NCHOE.....ACCUSED

**RULING**

The accused **LEMOIS OLE NCHOE** faces a charge of **MURDER CONTRARY TO SECTION 203 as read WITH SECTION 204 OF THE PENAL CODE**. The particulars of the charge were that

***“On the 4<sup>th</sup> day of November, 2010 at Olen Kabobok Village area in Narok North District within Rift Valley Province murdered NOAH NTARI NKURRUNAH”***

The accused pleaded ‘**Not Guilty**’ to the charge and his trial commenced before **Hon. Justice William Ouko** (as he then was) on 20/9/2012. The prosecution called a total of three (3) witnesses in support of their case.

**PW1 DR. TITUS NGULUNGU** produced the post-mortem report **P. Exb 1**. Following an autopsy conducted on the body of the deceased the doctor opined that the cause of death was ‘**nervous breakdown and haemorrhagic shock**’ due to a penetrating cut wound at the back of the neck and laceration of the spinal cord.

**PW2 INSPECTOR PETER MBURU** received the report of the murder and he rushed to the scene. He found the body of the deceased lying outside and recovered a blood stained sword.

**PW3 CHIEF INSPECTOR MONICA JERUTO**, was at the time the Deputy OCS at Narok Police Station. She too went to the scene after receiving the report and found the body lying dead outside a manyatta said to belong to the accused. **PW3** took over the exhibit knife **P.exb 2** which she forwarded to the Government Chemist for analysis. The accused who had been apprehended and tied up by members of public was re-arrested by **PW3** and taken to the police station.

From 20/9/2012 the prosecution were unable to avail any other witness to testify in this matter. They finally closed their case four (4) years later on 13/12/2016.

This court must now analyze the evidence on record to determine whether a *prima facie* case had been established to warrant placing the accused on his defence.

The definition of what constitutes a ‘**prima facie**’ case was given in the oft cited case of **RAMANLAL**

**T. BHATT Vs REPUBLIC [1957] E.A 332** where it was held

***“It may not be easy to define what is meant by a ‘prima facie case’ but at least it must mean one 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 this case **PW1** the pathologist tendered evidence regarding the cause of death of the deceased. He stated that the deceased met his death as the result of a cut wound to the back of the head.

However no evidence was adduced to prove the **identity** of the deceased. In other words no evidence was called to prove that the body which was examined by the pathologist was in fact the body of the deceased **‘Noah Ntari Nkurrinah’** named in the charge sheet. Neither **PW2** nor **PW3** knew the deceased before and therefore could not positively identify him. No relative who identified the body of the deceased to the pathologist was called to testify. Therefore there remains uncertainty about the identity of the deceased.

The evidence that the deceased was cut on the back of the head. There is no evidence to identify the accused as the person who so cut the deceased. No witness who saw the accused assault the deceased was called to testify. Neither **PW2** nor **PW3** witnessed any fight and/or altercation between the accused and the deceased. They both arrived at the scene **after** the incident. There was no evidence to show that the accused was in the company of the deceased immediately prior to the incident. On the whole there is nothing to link the accused to the assault on the deceased.

**PW2** recovered a blood-stained knife at the scene. **PW3** testified that she forwarded this knife to the Government Chemist for analysis. The Government Chemist was not called to testify in regard to his findings upon analysis of said knife. No report was produced as an exhibit. Thus there is no tangible evidence to connect this knife to the deceased or to the accused for that matter.

On the whole I find that the prosecution case does not pass muster. There is no evidence to link the accused to this offence of murder. If the accused elected to keep silent in his defence the evidence on record would not support a conviction. I find that no *prima facie* case had been established. I enter a verdict of **‘Not Guilty’** and I acquit the accused of this charge of murder. The accused is to be set at liberty forthwith unless he is otherwise lawfully held.

**Dated and Delivered in Nakuru this 31<sup>st</sup> day of March, 2017.**

Mr. Kanyi for Accused

Mr. Motende for State

**Maureen A. Odero**

**Judge**