



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL DIVISION

CRIMINAL CASE NO. 14 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

EDWARD WANJALA NDACHULE.....ACCUSED

RULING

Introduction

1. The accused person is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on the 26th day of March, 2013 in Namirimo, village of Musamba sub-location in Matungu District within Kakamega County he murdered Oscar Munya Ndachule. He pleaded not guilty to the charges and the case proceeded for hearing.

The Prosecution Case

2. The prosecution called two witnesses though one of the witnesses turned hostile. The only witness who testified fully was Moses Makokha Rajab Assistant chief Musamba sub-location who claims to have visited the scene of crime on 7th March, 2013 after receiving information of a murder in his village.

3. He reported the matter to the police at Mumias. He also interrogated members of the public who informed him that there had been a quarrel between the deceased and the accused during which the accused took a knife and stabbed the deceased.

Analysis and Determination

4. At this stage the court's duty is to make a finding on whether or not the accused has a case to answer. In other words this court has to determine whether the prosecution has established a prima facie case against the accused to warrant him being placed on his defence.

5. The principles governing what amounts to a prima facie case are set out in the case of **Bhatt- vs – R[1957] E.A 332**. In simple terms a prima facie case means 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.

6. In the instant case it will be difficult for the court to convict the accused person on the strength of the hearsay evidence tendered by PW2 Moses Makokha. There was no other evidence to corroborate his allegation and therefore this court should not be quick to put the accused on his defence on the basis of

uncorroborated evidence. The law is clear that a criminal case must be proved beyond reasonable doubt. And again such evidence if tendered ought to be corroborated. See the provisions of Section 124 of the Evidence Act.

7. The case against the accused person consists of a very serious offence which the prosecution ought to have taken seriously from the word go. The prosecution failed to call witnesses and thereby weakened their case. I therefore find no reasons to place the accused person on his defence as there is not even an iota of evidence linking him to the offence. He is accordingly acquitted under section 306(1) of the Criminal Procedure code. The accused is therefore set at liberty unless he is otherwise being lawfully held.

It is so ordered

Ruling delivered, dated and signed in open court here at Kakamega this 29th day of June, 2017

RUTH N. SITATI

JUDGE

In the presence of;

.....Mr. Matete(present).....for accused.

.....Mr. Juma Ochieng (present).....for state

.....Polycap.....Court Assistant