



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL DIVISION

CRIMINAL (MURDER) CASE NO. 62 OF 2011

REPUBLICPROSECUTOR

VERSUS

JONATHAN ONGWEKO OFWENDE.....ACCUSED

R U L I N G

Introduction

1. On 16th January, 2012, the accused person herein, Jonathan Ongweko Ofwende pleaded not guilty to a charge of murder contrary to section 203 as read with Section 204 of the Penal Code, Cap 63 of the Laws of Kenya. The particulars of the charge as per the information dated 23rd December, 2011, are that on the 20th day of December, 2011 at Bunyang'anyi Village in Navakholo District within Kakamega County, he murdered Japheth Ofwende Wanje.

The Prosecution Case

2. The hearing of the case commenced on 8th May, 2013 when Stephen Nyongesa who testified as PW1 (Stephen) gave his testimony. Between that day and the close of the prosecution case on 6th June, 2017 the prosecution called 6 witnesses. One of the witnesses was Dr. Juma Khayombe who testified as PW6. He produced the post mortem report form on behalf of Dr. Duncan Oluoch who performed the autopsy on the body of the deceased on 22nd December, 2011 at the St. Mary's Hospital Mortuary. According to the post mortem report, the deceased had bruises on the face and head, with the largest bruise being 5cm in diameter. He also had haematoma on the head, and a healing wound on the left leg. The head had subdural haemorrhage. The cause of death was given as increased intracranial pressure secondary to subdural haemorrhage secondary to blunt trauma.

Submissions

3. At the close of the prosecution case, Miss Mahuni counsel for the accused submitted that the prosecution had not established a prima facie case, that would warrant the accused person being put on his defence. The submissions were premised on grounds that none of the five chief prosecution witnesses saw the incident, PW3 Donfik Douglas Ofwende and PW5 Peter Nabiswa, both gave hearsay evidence, the entire case was closed without producing a single exhibit [except for the post mortem form which was produced as PExhibit 1] the investigating officer was never called to testify to explain how and why the accused person was arrested and finally that the evidence of the accused person's involvement in the offence could only have been justified by the investigating officer who was never called to testify.

4. In response to the submissions by the defence, Mr. Juma Ochieng for the state submitted that the prosecution was relying wholly on the evidence on record.

Analysis and Determination

5. I have now carefully considered the evidence on record together with the submissions by defence counsel. I have also carefully considered the law to what constitutes a prima facie case and have come to the conclusion that the prosecution has established a prima facie case requiring the accused person to be put on his defence. It is worth noting that at this stage the prosecution is not required to present a case that is very weighty. What the prosecution needs to prove is a case just sufficiently to require the accused to answer the charge. This is not to say that the accused is to prove his innocence, because at the end of the day, the prosecution must prove its case beyond reasonable doubt if a conviction is to result. See the case of **R-vs – Jagjivan M. Patel & others(1) TLR(R) 85 and Bhatt – vs- R[1957]EA 332.**

6. The accused is accordingly put on his defence in accordance with Section 306(2) of the Criminal Procedure Code. It is now up to the accused to say whether he will give sworn or unsworn evidence and whether he too will call any witnesses. If he so desires, he may choose to remain silent and let the court decide the case on the strength of the evidence on record.

Orders accordingly

Ruling delivered, dated and signed in open court at Kakamega this 28th day of June, 2017

RUTH N. SITATI

JUDGE

In the presence of;-

.....Mr. Juma (present).....for the Prosecutor

.....Mr. Elungata for Miss Mahuni.....for accused

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