



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO. 37 OF 2011

REPUBLIC.....PROSECUTOR

VERSUS

JAMES NYAMBEYA SERERIA.....ACCUSED

RULING

1. The accused person herein JAMES NYAMBEYA SERERIA was charged with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**.
2. The particulars of the offence are that on 17th February 2008 at Mashangwa village in Transmara District within Narok County murdered MAGIGE CHACHA MAGIGE.
3. The prosecution called a total of 2 witnesses after which it closed its case thereby setting the stage for this ruling on whether or not the accused person has a case to answer.
4. In the case of **R. vs Jagjivan M. Patel and others 1, TLR. 85**, it was held as follows:

“All the court has to decide at the close of evidence of the charge is whether a case is made out against the accused just sufficiently to require him to make a defence, it may be a strong case or it may be a weak case. The court is not required at this stage to apply its mind in deciding finally whether the evidence is worthy of credit or whether, if believed, it is weighty enough to prove the case conclusively, beyond reasonable doubt. A ruling that there is a case to answer would be justified, in my opinion, in a borderline case where the court, though not satisfied as to conclusiveness of the prosecution evidence, is yet of opinion that the case made out is one which on full consideration might possibly be thought sufficient to sustain a conclusion.”

5. The above cited case sets out the standard of proof on whether the prosecution has established a prima facie case or not.
6. In the instant case, it is worth noting that I only heard the evidence of PW2 PC David Wepukhulu while the testimony of PW1 was taken by my predecessor in the case Justice C.B. Nagillah. Be that as it may, I have perused the typed proceedings containing the evidence of PW1 who stated that she witnessed three people, including the accused herein, assaulting the deceased.
7. PW2, on the other hand, was the police officer who presented the report of the investigations officer one Inspector Diema. His testimony was that police officers from Mashangwa police station visited the scene of the murder after a report was made to the station and recorded statements from the witnesses who were at the scene. He also stated that the accused went into hiding soon after the death of the deceased and only resurfaced in 2011 whereupon the police arrested him.

8. In the instant case, the burden of proof fell squarely on the prosecution's docket to establish its case against the accused person beyond reasonable doubt. As can be seen from the summary of the evidence tendered by the prosecution witnesses, PW1 tendered cogent evidence that appeared to link the accused person to the murder of the deceased. She stated that she saw the accused assault the deceased on the fateful day. Accordingly, there is evidence upon which this court can arrive at the decision that a prima facie case has been made out against the accused person which can lead to his conviction in the absence of an explanation from him in the form of a defence.

9. From the brief overview and summary of the evidence tendered by the 2 prosecution witnesses, I find that the prosecution has established a prima facie case against the accused to warrant him being put on his defence. He is accordingly placed on his defence.

Delivered, dated and signed in at Kisii on 24th of July, 2017.

W.A. OKWANY

JUDGE

In the presence of:

Mr. Otieno for the State

Mr. Kaburi for the Accused

Omwoyo court clerk