

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO. 110 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

MATHEW ONSONGO IKOBE.....ACCUSED

RULING ON A CASE TO ANSWER

1. The accused person herein, **MATHEW ONSONGO IKOBE**, was charged with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**. The particulars of the offence were that on 22nd November 2014 at Nyabworoba village in Sensi Sub-Location in Marani District within Kisii County murdered **NICHOLAS AMINGA IKOBE**.

2. The standard of proof on whether or not the prosecution has established a prima facie case was set in the case of **Ramanlal Trambaklal Bhatt -Vs- Republic (1957) E.A. 332** as follows:

"(i) The onus is on the prosecution to prove its case beyond reasonable doubt and a prima facie case is not made out if at the close of the prosecution, the case is merely one which on full consideration might possibly be thought sufficient to sustain a conviction.

(ii) The question whether there is a case to answer cannot depend only on whether there is 'some' evidence irrespective of its credibility or weight sufficient to put the accused on his defence. A mere scintilla of evidence can never be enough; nor can any amount of worthless discredited evidence."

3. In the instant case, the prosecution presented a total of 8 witnesses whose evidence was that on 22nd November 2014 the accused who was a cousin to the deceased had a verbal confrontation with PW1, Naomi Aminga Kwamboka over a kiosk, which degenerated into a physical duel. PW1 reported the incident to the deceased who then sought the assistance of his brothers PW5, Elijah Boni Nyangoya and PW6 Isaac Okinyi Nyangoya who accompanied him to the scene of the confrontation, but as they were on their way, the accused threw a stone at the deceased. The stone hit the deceased on the left side of his chest and he fell down after which he was rushed to hospital where he was pronounced dead on arrival.

4. PW2, PW3 and PW4 responded to the commotion that had been raised by the assault on deceased and assisted in ferrying him to hospital. PW7 was the investigating officer while PW8 was the doctor who produced the post mortem report that established the cause of death to be blunt chest trauma associated with cardiac arrest.

5. A summary of the evidence tendered by the prosecution witnesses links the accused to the death of the deceased. PW5 testified that he saw the accused hit the deceased with a stone and that the stone hit the deceased on the chest.

6. I have evaluated the evidence on record. In my view, a prima facie case has been established against the accused person who was identified at the scene by PW5.

7. From the evidence on record, I am satisfied, without saying much at this stage, for obvious reasons, that a prima facie case has been made out against the accused persons, sufficient enough to require him to answer to the charge. The accused person is accordingly placed on his defence.

Delivered, dated and signed in at Kisii on **19th** of **September** 2017.

W. A. OKWANY

JUDGE

In the presence of:

Mr. Otieno for the State

Mr. Nyagwencha for the Accused

Omwoyo court clerk