



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT SIAYA

HIGH COURT CR. CASE NO. 34 OF 2015

(CORAM: J. A. MAKAU – J.)

REPUBLIC..... PROSECUTION

VERSUS

TOBIAS OTIENO NDIEGE..... ACCUSED

RULING

1. The accused **TOBIAS OTIENO NDIEGE** is charged with an 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 16th day of September, 2012 at Omia Dere sub-location in Rarieda District within Siaya County Murdered **SAMUEL ADERA ODILA**.
2. In criminal cases the burden of proof of the prosecution case beyond any reasonable doubt lies with prosecution and never shifts and a *prima facie* case is made if at the close of the prosecution case, the evidence is one which on full consideration might possibly in absence of explanation to the contrary be sufficient to sustain a conviction.
3. In the case of **R V Jagjivan M. Patel and Others I, TLR 85** the Learned Judge stated thus:-

“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 border line 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.”

4. In the instant case I heard five (5) prosecution witnesses thus PW1 – PW5. PW1's evidence dealt with the identification of the body of the deceased **Samuel Adera Odita** to Doctor for postmortem purposes. PW2, Doctor Collins Otieno carried out the postmortem on the body of the deceased and filled the postmortem report exhibit P1 and formed an opinion as to the cause of death to be Respiratory failure with intra-abdominal haemorrhage probably from blunt force injury. PW3 No. 90899 P.C. Sammy Kimanzi, the Investigating Officer, in this case, testified that he was the first officer to receive report from the deceased, who complainant, that on 24.8.2012 he was assaulted by the accused. PW3 recorded the report in the O.B. and issued the deceased with a P3 form. The deceased told PW3 he was slapped severally by the accused and

pushed to the ground. That the P3 form was returned on 29.8.2012 and statement recorded from the deceased. The Accused was subsequently arrested, PW3 was later informed of the death of the deceased. PW4, a Clinical Officer testified that the deceased came for treatment before then complaining of assault and that he later died. He gave the name of the patient as **Samuel Adero Odila**. Outpatient No. 2900/2012. PW4 No. 92193, PC Jowaquine Sioma, an Investigations Officer, also received the accused from P.C. Kimanzi, PW1 and Cpl. Osako and the statement of the deceased and P3 form. PW5 then charged the accused with the **offence of assault causing actual bodily harm** before PM's Court Bondo vide Court file No. 647 of 2012. That later on 25th September 2012, PW5 received a Report that the complainant in PM Criminal Case at Bondo Samuel Adera Odilo had died at Bondo District Hospital. PW5 arranged for postmortem which was conducted on 27.9.2012 by PW2 in presence of PW1 and other relatives. PW5 thereafter had the accused charged with the **offence of Murder**.

5. **I have very carefully considered the evidence adduced by the prosecution witnesses, and the provisions of Section 306 (2) of the Criminal Procedure Code as well as submissions on case to answer by the prosecution and submissions on no case to answer by the defence Counsel. I have considered the respective authorities submitted in support of rival submissions and upon consideration of the evidence placed before me, I am satisfied 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.**

DATED, SIGNED AND DELIVERED AT SIAYA THIS 28TH DAY OF JULY, 2016.

J. A. MAKAU

JUDGE

DELIVERED IN OPEN COURT THIS 28TH DAY OF JULY, 2016.

In the presence of:

M/s. Mourine Odumba for the State

S.M. Onyango Associates for the Accused

Accused present in person.

Court Clerk – Kevin Odhiambo

Court Clerk – Mohammed Akideh

J. A. MAKAU

JUDGE