



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**CRIMINAL (MURDER) CASE NO. 25 OF 2012**

**REPUBLIC .....PROSECTOR**

**VERSUS**

**HENRY MALANDA MUKABI.....ACCUSED**

**R U L I N G**

**Introduction**

1. The accused person herein is charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence being that on 9<sup>th</sup> July 2012 at Sunrise Sub-Location in Emuhaya District within the County of Vihiga he murdered DORRIS ACHIENG. The accused pleaded not guilty to the charge when he appeared for plea on 31.07.2012. The hearing of the case commenced on 17.06.2014

**The Prosecution Case**

2. The prosecution called 6 witnesses. From the testimonies of these witnesses, the prosecution case briefly is that on 09.07.2012 at about 2.00pm, the deceased in this case was sent to the grinding mill. The deceased was in the company of one Dorothy Ondiso (PW5). After milling the maize, the deceased and her companion started their trip back home. But before they got home, they met the accused herein who asked the deceased to accompany him into the green maize plantation so he could give her some cobs for roasting. That was the last time the deceased was seen alive. On the following day the body of the deceased was discovered in the same maize plantation where the accused and the deceased had gone the previous evening on the pretext that the accused was going to give the deceased some maize cobs for roasting. The accused was arrested by members of the public before being escorted to Luanda Police Station while the body of the deceased was taken to Raboni Hospital Mortuary.

3. Dr. Philip Kawarom Athero who testified as PW4 conducted the post mortem examination on the body of the deceased on the 12.09.2012 during which he established that the body had bruises on the head and neck while the lungs were congested with a lot of fluids. There were blood clots in the head and ears. The doctor's opinion on the cause of death was fatal strangulation with fractures of the ribs and neck. Dr. Athero produced the post mortem report at Pexhibit

**Submissions**

4. At the close of the prosecution case, counsel for the accused submitted that the prosecution had not established a prima facie case requiring the accused person to be put on his defence. Counsel contended

that the evidence on record raises doubts as to whether the mens rea and actus reus have been proved by the prosecution. The prosecution relied on the evidence on record in urging the court to make a finding that the accused person has a case to answer

**Analysis and Determination**

5. I have now carefully considered the evidence on record as well as the submissions by counsel for the accused person. I have also carefully considered the law. The principle to be applied by courts in determining whether or not the prosecution has established a prima facie case was well ventilated by the Court of Appeal for Eastern African in the case of **Bhatt -vrs – R [1957]EA 332** where Sir Newnham Worley, P clearly stated, while citing a passage from the judgment of **Wilson J in R – Vs -Jagjivan M. Patel & Others- TLR( R) 85**, that at this stage of the case, the court need not make a finding of a case proved beyond any reasonable doubt. At this stage, all that is necessary is for the court to be satisfied that the case made out so far, if fully and properly considered could result in a conviction.

6. Applying the above principle to the evidence before me, I am satisfied that the prosecution has established a prima facie case requiring the accused person to be put on his defence. The evidence shows, regardless of whether it’s weight is enough to prove the case conclusively, that the accused person was the last person to be seen with the deceased before deceased’s body was discovered in the maize plantation on the day after the two were seen together.

7. As provided under the Criminal Procedure Code, the accused is at liberty to give sworn or unsworn evidence. If he chooses to testify under oath, he may be asked questions both by the court and the prosecution, but where he elects to give unsworn evidence; he may not be asked any questions. In either case, the accused has a right to call a witness or witnesses. The third option is for the accused to remain silent and leave the court to decide the case on the evidence before it. The accused may now proceed and inform the court how he intends to proceed with his defence.

It is so ordered.

**Ruling delivered, dated and signed in open court at Kakamega this 12<sup>th</sup> day of October,2016**

**RUTH N. SITATI**

**JUDGE**

**In the presence of;**

.....**Mr. Jamsumba (present)**.....**for State**

.....**Mr. Ondieki (present)**.....**for Accused**

.....**Mr. Polycarp**.....**Court Assistant**