

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO. 8 OF 2008

REPUBLIC.....PROSECUTOR

VERSUS

WYCLIFFE MAKOKHA KASALA.....ACCUSED

RULING

1. The accused herein is charged with murder contrary to **sections 203** as read with **Section 204** of the **Penal Code**. The particulars are that *on 23-12-2007 at Inaya Village within Lubinu sub location, East Wanga Location in Mumias District within Western Province he jointly with others not before the court murdered IBRAHIM ANYONYI MOSI (“the deceased”)*. He denied the charge. He was represented by Mr. Elungata.
2. In the course of the trial, which commenced on 15/02/2012 and ran up to 22/01/2015, the prosecution called Five 5 witnesses, at the end of which, the Defence counsel, Mr. Elungata-submitted that the prosecution had not adduced sufficient evidence to warrant putting the accused on his defence. Mr. Ngetich for the Prosecution maintained that a prima facie case has been established to warrant putting the accused person on his defence.
3. Part of the evidence by the prosecution was taken by Hon. Mr. Justice Chitembwe before he was transferred. This court only took the evidence of PW5 the Investigating Officer upon due compliance with **Section 200 (3)** of the Criminal Procedure Code.
4. This Court has carefully gone through the entire evidence adduced by the prosecution, and considered the submissions by both learned counsel. The prosecution by close of its case is required to establish a prima facie case. Such a case is one where, if the accused does not offer any defence then the court could convict on the evidence on record.
5. In my view the evidence herein establishes a prima facie case against the accused. Although the incident upon which this case is hinged occurred at night there was moonlight and the suspects could be identified. The weapon that is alleged to have been used in attacking the deceased was seen in the accused's house and identified by the Prosecution Witness 4 (PW4) who claimed to have witnessed the attack on the deceased by three persons who included the accused herein. Prosecution Witness 2 (PW2) who gave evidence that the deceased had sent the accused to buy some items is corroborated by that of PW3 and PW4. The accused never returned the change belonging to the deceased who went to ask for the same and which prompted the accused and two others to attack him (deceased) that alleged attack led to the death of the deceased.
6. Taking all the evidence into account, I have found and concluded that the prosecution has made out a **prima facie** case to warrant putting the accused on his defence on the murder charge preferred against him.
7. Accordingly, I rule that the accused has a case to answer. The accused is therefore put on his defence under **section 306 (2)** of the Criminal Procedure Code.
8. In defending himself the accused person can elect to give evidence on oath or give an unsworn statement. He also has the option of remaining silent and letting the court decide the case on the evidence before it. If he chooses to give sworn evidence, he will be asked questions by the prosecution. Whichever option the accused chooses, he has a right to call witnesses.

Delivered, dated and signed in open court at Kakamega this 19th day of February 2015

RUTH N. SITATI

JUDGE

In the presence of

Mr. Ngetich..... for State

Mr. Elung'ata..... for Accused

Mr. F. Juma.....Court Assistant