

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE (MURDER) NO.4 OF 2006

REPUBLIC PROSECUTOR

VERSUS

PETER OKOTH ORIANGO ACCUSED

RULING

1. The accused person herein, Peter Okoth Oriango was arraigned before this honourable court on 23rd February 2005 charged with murder contrary to **Section 203** as read with **Section 205** of the **Penal Code**. The case was heard but later declared a mistrial and by the information dated 14th October 2011, it is alleged that on the 9th November 2005 at Awendo Market within Migori District in Nyanza Province, he murdered Olango Nyamisi.
2. The accused pleaded not guilty and the hearing of the case started in earnest on 8th May 2013. The prosecution called 6 witnesses through whose testimonies, the prosecution sought to prove that the accused had malice aforethought to kill the deceased and that through his acts on 9th November 2005, he carried out his intentions by killing the deceased.
3. At the close of the prosecution's case, Mr. O.M. Otieno, counsel for the accused, asked court to make a ruling on whether or not the accused has a case to answer.
4. I have now considered very carefully all the evidence that is on record. I have also considered the relevant provisions of the law and case law on what constitutes a *prima facie* case requiring an accused person to be put on his defence. After considering all the above, I am satisfied that the prosecution has placed sufficient evidence before the court requiring the accused person to answer the charge. In deciding whether or not the accused has a case to answer, the court is aware that no amount of worthless evidence shall suffice in this regard. The court is also aware that at this stage, the evidence against the accused person need not be such as would prove the case beyond any reasonable doubt. Proof of the case beyond any reasonable doubt is a requirement placed upon the state once the court has heard evidence from both the State and the defence.
5. Thus being satisfied that the accused must be put on his defence in accordance with **Section 306 (2)** of the **Criminal Procedure Code**, the accused has three (3) options open to him in defending himself. First, he can give sworn evidence in which case, he will be asked questions by the prosecution. Second, he can choose to give unsworn evidence in which case, no one will ask him any questions. Third, the accused can choose to remain silent and let the court decide the case on the evidence that is before it. Whichever mode the accused elects in defending himself, he has a right to call witnesses.
6. It is now upon the accused to let the court know which of the three options he will take in defending himself.

Dated and delivered at Kisii this 26th day of March, 2014.

R.N. SITATI

JUDGE

In the presence of:

Mr. Ochieng (present) for State

Miss Gogi (present) for Accused

Mr. Bubi - Court Clerk