



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**  
**CR(MURDER) CASE NO.46 OF 2009**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**IBRAHIM KUYA KWENDO.....1<sup>ST</sup>- ACCUSED**

**ALFRED AMUMASI WEKHOMO.....2<sup>ND</sup> ACCUSED**

**R U L I N G**

1. The two accused persons, Ibrahim Kuya Kwendo and Alfred Alumasasi Wekhomo were arraigned before this Court one count of Murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on the 3<sup>rd</sup> day of October 2009 at about 7.00pm at Ekhangaba village, Ebuhando sub location Wekhomo location in Emuhaya District of Western Province, jointly murdered one KENNEDY OMONDI. They both pleaded not guilty to the charge when they appeared for plea on 5<sup>th</sup> November 2009. The case has been going on since then.
2. The Prosecution called 6 witnesses in its endeavour to prove that the accused persons killed the deceased unlawfully and with malice aforethought.
3. At the close of the Prosecution case, Mr. Musiega of A.B.L Musiega & Company advocates submitted that the Prosecution had not established a prima facie case to warrant the accused persons being put on their defence. It was submitted that though the defence is not disputing the fact of death of the deceased which death was confirmed by Dr. Francis Odera who testified as PW5, they do not agree that it was they are the ones who occasioned the death of the deceased. Counsel submitted that the Court should not call the accused persons to defend themselves for speculative reasons. The State through Mr. Omwenga, Prosecution Counsel relied on the evidence on record.
4. I have now carefully read through the evidence of all the 5 Prosecution witnesses. I have also read through the submissions filed by defence counsel. The issue for determination is whether the evidence as presented establishes a prima facie case against the accused persons or whether, as stated by the defence the evidence is merely speculative?
5. In my considered view, I am satisfied that the Prosecution has established a prima facie case requiring the accused persons to be put on their defence. Contrary to defence Counsel's submissions the Prosecution is not required at this stage to prove its case against the accused persons beyond any reasonable doubt. That standard of proof is for the next stage when the Court will be making the final decision on whether or not the Prosecution will have proved all the ingredients of the offence Murder.

For now, it suffices to say that the Prosecution has met the threshold of establishing a prima facie case against the accused persons requiring both of them to be put on their defence. I now proceed to put both accused persons on their defence.

6. As they contemplate on how to proceed, the accused persons are reminded that they can give sworn or unsworn evidence or if they wish they can remain silent and let the Court decide the case on the evidence that is before it. If the accused persons choose to give sworn evidence, they will be subjected to cross examination by the Prosecution and may also be asked questions by the Court. However, if they give unsworn evidence, they will not be asked any questions. In all the three instances, the accused persons are at liberty to call witnesses.

7. I now call upon the accused persons to confirm to the Court their choice of the mode of defence.

8. Orders accordingly.

Ruling delivered, dated and signed in open Court at Kakamega this 29<sup>th</sup> day of September 2015.

**RUTH N. SITATI**

**J U D G E**

In the presence of:-

Mr. Omwenga (present)for State

Mr. Ondieki h/b for 1<sup>st</sup> Accused

Musiega for 2<sup>nd</sup> Accused

Mr. Lagat - Court Assistant