



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**CRIMINAL CASE 27 OF 2009**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**IBRAHIM MAKAMBA MUKABANA ..... ACCUSED**

**RULING**

At the close of the case for the prosecution, I was urged by the defence counsel to make a ruling on whether there is a case for the accused to answer.

Mr. Ondieki, learned counsel for the defence filed written submissions. Counsel submitted that the incident occurred at night when it was heavily raining. That the only eye witness PW1 Fridah Onyango, stated that she saw the accused through a single flash of lightening at night. She also stated that she saw the accused at the scene where the deceased died. That she held the accused by the collar and asked him why he had killed Onyango.

However, the evidence of the same prosecution witness was different from what she recorded in the police statement. Counsel submitted that *mens rea* and *actus reus* by the accused were not proved. Counsel concluded by stating that a prima facie case had not been established against the accused to be placed on his defence. He relied on the case or *Ramanlal Bhatt -vs- R. [1957] ea 332*, which was the decision of the Court of Appeal at Dar-es-Salam. Counsel argued that the prosecution had not tendered evidence sufficient to require the accused to be put on his defence.

Learned Prosecuting Counsel, Ms Opiyo stated that a prima facie case had been established. That there was justification in putting the accused on his defence. That the evidence on record established a prima facie case. Counsel relied on the evidence on record.

This is a case that was partly heard by *Thuranira, J.* I took over the case from the learned Judge and recorded evidence in respect of PW7, the doctor who produced the post-mortem, form and PW8, PC David Sugut, who testified on behalf of the Investigating officer PC Lagat who had died.

I have perused the evidence on record. A prima facie case is one where, if the defence does not offer any evidence, then a reasonable court directing itself on evidence on record might convict. In the present case, the evidence of PW1 the wife of the deceased is that she was at the scene. Her daughter PW6 also mentions that the accused was at the scene. Though it was dark, they claimed to have seen the accused through a single flash of lightening. They said he was a neighbour, so they knew him before. The deceased is dead. The cause of death is drowning.

In my view, without getting into the deep merits of the case, I find that a prima facie case has been established against the accused person. He will have to be put on his defence.

To conclude, I find that the accused has a case to answer and I will put him on his defence, and explain to him his rights.

*Dated and delivered at Kakamega this 29th day of May, 2014*

**George Dulu**

**JUDGE**