



IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL MURDER NO.31 OF 2010

REPUBLIC PROSECUTOR
VERSUS
KENNEDY OBARAACCUSED
RULING

1. The accused person herein Kennedy Obara was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the offence were that on the 11th day of April 2010 at Nyaramba Sub-location in Gucha South District within Nyanza Province, he murdered Hezbon Nyamongo.
2. During the plea taken on 4th May 2010 before Musinga, J, (as he then was) the accused, answered thus:-
 1. **“I killed the deceased with a reason.”**
3. A plea of not guilty was entered. The prosecution called a total of 5 witnesses. At the close of the prosecution case, Mr. Omwega counsel for the accused, submitted that since the investigating officer is the one who lays basis for the arrest and charging of an arrested person, the same should have come to testify in this case otherwise there is no evidence as to why accused was arrested and charged.
4. He further submitted that as it stands, the prosecution case is a flop having not established why accused was arrested and charged. In addition to this, he submitted that none of the 5 prosecution witnesses came forward to say they saw accused kill the deceased and moreover, no evidence was adduced to prove that accused had any grudge with or ill motive against deceased as would have made him to kill the deceased.
5. Counsel also submitted that the prosecution witnesses gave contradictory evidence as to the identity of the deceased; that whereas the charge sheet talks about Hezbon Nyamongo, PW2 told the court of her child known as Nyamongo Obara while PW3 gave the name of deceased as Kennedy.
6. In concluding his submission, counsel termed the prosecution evidence as contradictory and did not link accused with death of the deceased. Hence he urged the court to dismiss case at this stage and acquit the accused.
7. Mr. Majale, learned counsel for the state chose to wholly rely on the evidence on record.
8. Having carefully considered the evidence before court as narrated by the prosecution and further considering the accused's statement when he took plea, I am satisfied that the prosecution has established a *prima facie* case against the accused requiring the accused person to be put on his defence. At this stage, the prosecution does not have to prove its case beyond any reasonable doubt and on the basis of that I find and hold that accused person has a case to answer and I now proceed to put him on his defence.
9. Pursuant to **Section 306(2)** of the **Criminal Procedure Code**, the accused person may give sworn evidence from the witness box, in which case he will be liable to cross examination by the prosecution. He may, if he chooses, testify from the dock and in that case no questions will be put to him and lastly, he may remain silent and let the court decide the case on the evidence that is before it. In all cases, the accused person can call witnesses. It is now for the accused person to indicate to the court which option he will take.
10. It is so ordered.

11. Delivered, dated and signed in open court at Kisii on this 28th day of August, 2014

R.N. SITATI

JUDGE.

In the presence of:-

Mr. Ochieng (present) for State

Mr. Nyagwencha for Omwega for Accused

Mr. Bibu - Court Assistant