

REPUBLIC OF KENYA

IN THE HIGH COURT AT KAKAMEGA

CRIMINAL CASE NO: 50 OF 2008

REPUBLIC.....STATE COUNSEL

VERSUS

S M.....ACCUSED

RULING

The accused person is charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code.

The particulars are that the accused on the 23/11/2008 in Kakamega East District within Western province murdered **S M**.

The prosecution called two witnesses. PW1, **P.C Wycliffe Odhiambo** was based at Kakamega police station. He investigated the case. On 1/12/2008 he was instructed to investigate the case. He went to [particulars withheld] village and found that the deceased's body had been retrieved from a river. There were members of the public and the area assistant chief. The accused had also been arrested. The deceased was the accused's child aged two years. The body had no injuries and was taken to Kakamega Hospital mortuary.

According to PW1, he recorded statements from witnesses and noted that it is the accused who threw the deceased into the river. There was an eye witness who was a six years old child.

PW2, **Dr Dickson Mchana Mwaludindi** produced the post mortem report prepared by Dr. Oseke on 5/2/2008 at the Kakamega Provincial General Hospital. The doctor opined that the cause of death was cardiopulmonary arrest due hypoxemia Secondary to drowning.

The prosecution proceeded to close its case. The court has to decide whether the accused should be placed on his defence. From the evidence on record, no one saw the accused throwing the deceased on the river. The eye witness did not testify, the area assistant chief also was not called to testify the members of the public who arrested the accused were also not called to testify. The members of the public who arrested the accused were also not called to testify. The evidence on record is not sufficient enough to place the accused on his defence. There is no direct evidence against the accused. PW1's evidence ought to have been corroborated by that of the eye witness left on its own, PW1's evidence amounts to mere hearsay.

From the evidence on record, I do find that the prosecution has not established a prima facie case against the accused who is hereby acquitted under section 316 of the Criminal procedure code. The accused shall be set at liberty unless otherwise lawfully held.

Dated, delivered and signed at Kakamega this 24th day of September 2014.

SAID J. CHITEMBWE

JUDGE