



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KISII

CRIMINAL CASE (MURDER) NO. 50 OF 2008

REPUBLIC
PROSECUTOR

VERSUS

JOSIA OMULO ANYANGO
ACCUSED

RULING

1. The accused herein, **Josia Omulo Anyango** is accused of the murder of **John Ondango Omwono**. It is alleged that he committed the offence on the night of 19th October 2008 at Kanyawanga sub location in Rongo District within Nyanza Province. He denied committing the offence. The prosecution called four (4) witnesses in support of its allegations against the accused.

2. At the close of the prosecution's case, Mr. Ogari, counsel appearing for the accused submitted that the prosecution has not established a *prima facie* case warranting the accused being put on his defence. It was counsel's contention that none of the 4 witnesses saw the accused commit the deed. He further submitted that the prosecution's failure to produce the postmortem report was fatal to its case, and that in the circumstances, the case against the accused cannot stand. He urged the court to acquit the accused under **section 306 (1)** of the **Criminal Procedure Code**.

3. In response, the learned state counsel, Mr. Gitonga submitted that on the basis of the evidence on record, the prosecution had established a *prima facie* case warranting the accused being put on his defence.

4. I have now carefully considered the evidence on record in light of the law. It is clear to me that the standard of proof required at this stage is not as high as that required in establishing a case beyond any reasonable doubt. At this stage, the court only needs to be satisfied that on the face of it, there is a need for the accused person to explain himself.

5. After considering the evidence of the four prosecution witnesses, and despite the fact that the postmortem report was not tendered in evidence, I am satisfied that the prosecution has established a *prima facie* case warranting the accused being put on his defence. I make a finding to that effect. The accused shall defend himself against the allegations of murder leveled against him.

6. **Section 306 (2)** gives the accused the opportunity to choose one of three ways of defending himself:-

(a) By giving a sworn statement from the witness box, in which case he will be liable to cross

examination by the prosecution;

(b) By giving unsworn evidence from the dock, in which case no questions will be put to him;

(c) By remaining silent

In each case, the accused is at liberty to call witnesses.

7. It is now time for the accused to indicate to the court which of the three options he will take.

8. It is so ordered.

Dated and delivered at Kisii this 26th day of January, 2012

RUTH NEKOYE SITATI

JUDGE.

In the presence of:-

Mr. Gitonga (present) for State

Mr. Sagwe for Ogari (present) for accused

Mr. Bibu - Court Clerk

RUTH NEKOYE SITATI

JUDGE.