



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CRIMINAL CASE (MURDER) NO. 5 OF 2009

REPUBLIC PROSECUTOR

VERSUS

MOSES KORA CHACHA ACCUSED

RULING

1. The accused herein, **Moses Kora Chacha** is charged with murder contrary to **section 203** as read with **section 204** of the **Penal Code**. It is alleged that on the night of 26th/27th December 2008 at Keboye sub location in Kisii South District within Nyanza Province, he murdered **CHARLES CHACHA ORANGI**. He denied committing the offence.
2. The prosecution called five (5) witnesses from whose testimonies it hoped to convince this court that the accused, who was bitter with his deceased father for refusing to share out family land, carefully planned to kill his father and that the accused did not hide his intentions. The prosecution also expected to show by the evidence of the 5 prosecution witnesses that the accused armed himself before confronting his father and assaulting him senseless. On the following day after the assault, the deceased was found lying dead with injuries around his neck. The medical evidence given by PW4, Dr. Cheruiyot Kipng'eno Robert showed that the deceased had died due to cardio respiratory arrest due to strangulation of the neck.
3. At the close of the prosecution's case, counsel for the accused submitted that the prosecution has not established a prima facie case warranting the accused being put on his defence. Defence counsel pointed out the following:-
 - **that it was not established at what time the deceased might have met his death;**
 - **that though PW1, Ronald Orangi Chacha, alleged to have found his father's door open on the morning the deceased's body was discovered, he could not say who had opened the door;**
 - **that it is not clear from the evidence on record as to what may have happened to the deceased before he met his death.**
4. It was the contention of the defence that the deceased may have committed suicide, a theory that was discounted by Dr. Cheruiyot, PW4.
5. At this stage, what is required of the prosecution is to show that on the face of it, the accused needs to explain himself. Contrary to what counsel for the accused said, this is not the stage requiring the prosecution to prove its case beyond any reasonable doubt. That standard of proof is for the final stage of

the fight between the prosecution and the defence.

6. I have now carefully considered the submissions made to the court in this matter. I have also considered the law as to what constitutes a *prima facie* case. On the basis of the law and the evidence that is on record, I am satisfied that the prosecution has established a prima facie case against the accused warranting him to be put on his defence. Accordingly, I proceed to put the accused on his defence.

7. Towards that end, I am under a duty to remind the accused of the provisions of **section 306 (2)** of the **Criminal Procedure Code** that there are three ways in which the accused can defend himself:-

“i) By giving sworn testimony from the witness box in which case he will be liable to cross examination by the prosecution;

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

iii) By choosing to remain silent.”

In each case, the accused has the right to call witnesses.

8. It is now the turn of the accused to indicate to the court which option he will take.

9. 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. Kaburi (present) for Accused

Mr. Bibu - Court Clerk

RUTH NEKOYE SITATI

JUDGE.