



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII

Criminal Case 16 of 2006

REPUBLIC PROSECUTOR

VERSUS

PAUL OLUOCH OWILA ACCUSED

RULING.

The accused was charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence were that on the 27th day of March, 2006 at Kotieno I sub location, Migori District of the Nyanza Province, the accused murdered Evans Oketch Owila, hereinafter referred to as “the deceased”.

The prosecution called three witnesses. The first one, Michael Otieno Owira, PW1, was the Assistant Chief, Kotieno II sub location. He testified that on 27th March, 2006, he received a report from one Odundo that the accused had killed his brother, the deceased. PW1 went to the home of the deceased and found a crowd of people. He saw the deceased’s body lying on the floor of his house. He was informed by the deceased’s widow that it was the accused who had assaulted the deceased following a quarrel between the two. PW1 did not see the accused until his arraignment in court.

Inspector Charles Bundi, PW2, was stationed at Migori police station at the material time. When he received the report regarding the deceased’s death, together with other police officers they went to the scene of the crime. They were informed that the deceased had been assaulted by the accused. He was informed that the accused and the deceased had quarreled over a herdsman. The accused was later arrested by Inspector Andrew Atandi, PW3.

The prosecution was unable to avail other witnesses, despite several adjournments that were granted at its request for that purpose.

In light of the above evidence only, I am unable to hold that a *prima facie* case has been established against the accused. No direct evidence was adduced as to how the deceased met his death. The court cannot entirely rely on the evidence of PW1 and PW2 to place the accused on his defence.

A *prima facie* case is arrived at where the court, properly directing itself to the law and the evidence on record would convict an accused person if no explanation is offered by the defence, see BHATT –VS- REPUBLIC [1957] E.A. 332.

That threshold has not been achieved in this case.

Consequently, the accused is acquitted of murder under Section 210 of the Criminal Procedure Code.

He is set at liberty unless otherwise lawfully held.

DATED, SIGNED AND DELIVERED AT KISII THIS 19TH DAY OF MAY, 2009.

D. MUSINGA

JUDGE.

19/5/2009

Before D. Musinga, J.

Mobisa – cc

Mr. Kemo for state

Mr. Sagwe HB for Mr. Omwega for accused

Court: Judgment delivered in open court.

D. MUSINGA

JUDGE.