



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**  
**Criminal Case 3 of 1997**

**REPUBLIC.....PROSECUTOR**  
**VS**  
**PAUL KIVISI LUSITI.....ACCUSED**

**RULING**

At the close of the prosecution's case the parties were invited to make submissions under the provisions of section 306 (1) of the criminal procedure code. Mr. Were who appears for the accused was of the view that the prosecution had not established a prima facie case to enable this court place the accused person on his defence. He punched several holes on the evidence tendered in support of the prosecution's case. He beseeched this court to hold that the accused had no case to answer and proceed to acquit his client.

At the other ridge, Mr. Onderi, the senior state counsel was of the view that the prosecution had established a prima facie case to enable this court place the accused on his defence. He pointed out that the accused was at the scene of crime and had a gun which according to the prosecution was used to gun down the deceased. It is his submission that the accused was positively identified at the report office where the deceased met his death.

I have anxiously and carefully considered the rivaling submissions of both learned counsels. I have also keenly considered the evidence presented by the prosecution witnesses. At this stage I only need to ask myself whether or not the prosecution has made out a case to warrant this court exercise its jurisdiction to place the accused on his defence. I am convinced and satisfied that the evidence adduced by the prosecution witnesses show that the accused committed the offence. It is therefore crystal clear that the prosecution has established a prima facie to warrant this court to place the accused person on his defence which I hereby order. Having done that, then it is now upon the accused to state how he intends to make his defence.

**DATED AND DELIVERED THIS 25th DAY OF February 2005**

**J.K. SERGON**

**JUDGE**