

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL CASE NO.40 OF 2003

REPUBLIC PROSECUTOR

VERSUS

ABDALLA ALFAN MWADZIKONDO ACCUSED

**Coram: Before Hon. Justice Mwera
Miss Mwaniki for the State
Miss Jin -
No appearance for the accused person
Court clerk – Mitoto**

R U L I N G

After hearing ten (10) prosecution witnesses the State closed its case. Mr. Munyao who has the conduct of this case (from Ms. Jin w.e.f. 30-6-04) submitted that a prima facie case had not been made out to warrant the accused to be put on his defence.

That evidence so far had not linked the accused to the commission of the offence and that even PW.1 (Masud Serai) who claimed to have been at the scene on the night (not 9.30 a.m.) of the incident did not come across clearly with the vital details e.g. as to time, exact spot and whether the accused had/left with the knife (the murder weapon. That the other evidence was basically hearsay and in any case the knife which the accused is said to have given to the police was examined by a government analyst and no blood was found on it – either of the accused or the deceased.

The learned State Counsel's position was that the evidence on record was sufficient to put the accused on his defence. After hearing both counsel and perusing the evidence so far adduced the court is of the view that the accused be put on his defence in accordance with S.306 (2) Criminal Procedure Code.

Order delivered on 22nd November, 2004.

**J.W. MWERA
JUDGE**