



REPUBLIC OF KENYA



Republic v Ambet (Criminal Case 3 of 2019) [2024] KEHC 6689 (KLR) (6 June 2024) (Ruling)

Neutral citation: [2024] KEHC 6689 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE 3 OF 2019
RE ABURILI, J
JUNE 6, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

MICKEY OCHIENG AMBET ACCUSED

RULING

1. The accused person is Mickey Ochieng Ambet. He is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.
2. Particulars of the offence as per information dated 14th January 2019 are that on the 2nd day of January 2019, at Embassy Lounge, Ahero Township, Nyando Sub-county within Kisumu County, the accused murdered one Brian Odhiambo Ouro.
3. The accused person was mentally examined and found to be fit to stand trial.
4. Pleas was taken on 24th January 2019 before Hon. F. A. Ochieng J as he then was and accused was released on surety bond on the 6th February 2019.
5. The accused denied committing the offence. Five witnesses testified before my predecessor Judge F. A. Ochieng before he was elevated to the Court of Appeal.
6. I took over the trial of the accused person on 16th May 2023. The accused person's counsel then, Mr. Nyamweya informed the court that his client wished that the case proceeds from where it had reached and the prosecution counsel Mr. Okoth conceded.
7. The court gave directions under Section 200 of the Criminal Procedure Code giving the accused person the liberty to recall any of the witnesses who had testified for further cross examination upon giving adequate notice to the prosecution.



8. When the matter came up for further hearing on 26th June 2023, it could not proceed as the defence counsel was engaged in the DPP recruitment process. The court then proceeded on leave until 18th October 2023. On the latter date, the court was engaged out of the court station on Public duty assignment. The hearing was recalled for 18th October 2023 and mentioned on 16th October 2023 to fix a fresh hearing date for 22nd November 2023.
9. On the latter date, witnesses who were police officers were said to be engaged the security of National KCSE examinations while the doctor was transferred.
10. Fortunately, Dr. Ombok attended court and she testified and produced the postmortem Report on behalf of Dr. Eddy Owuor who had left for further studies in Tanzania. The next hearing continued on 24th January 2024 as witnesses were previously not cooperating. The last witness testified on 28th May 2024 as PW 11 and the prosecution closed its case.
11. The issue now for determination is whether the prosecution has established a prima facie case against the accused person to warrant him to be placed on his defence. The burden of proof in criminal cases lies on the prosecution to prove its case against the accused person and that burden of proof does not shift.
12. The standard of proof is that of beyond reasonable doubt. However, at this stage, the court cannot Rule on whether the case against the accused person is proven beyond reasonable doubt as it can only do so at the end of a full trial after considering the prosecution and defence case.
13. Of importance is that the accused bears no burden of proving his innocence. He is presumed innocent until proven guilty and whether, when placed on his defence he elects to tender any evidence in defence or not, that is his guaranteed constitutional right under Article 50(2) of *the Constitution*.
14. Upon considering the evidence adduced by all the 11 prosecution witnesses and without delving deep into their respective testimonies, I am satisfied that the prosecution have at this stage established a prima facie case against the accused person herein and therefore I find and hold that Mickey Ochieng Ambet has a case to answer and is therefore placed on his defence.
15. The provisions of Section 306(2) of the *Criminal Procedure Code* as read with Article 50(2) (i), (k) and (l) of *the Constitution* are read out to the accused in the presence of his counsel.
16. I so order.

Dated, Signed and Delivered at Kisumu this 6th Day of June, 2024

R. E. ABURILI

JUDGE

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