

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

CRIMINAL CASE NO. 30 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

MAURICE ACHIENG AGINGU..... ACCUSED

RULING

1. Maurice Achieng Agingu is charged with an offence of murder contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars of the offence are that on the 13th day of September, 2017, at Kogello village of Homa Bay District within Homa Bay County, in association with others not before court, murdered Ezekiel Omollo Ragot.
3. There was no evidence that linked the accused to the offence. It would appear that he was arrested and charged for being found at the scene where the body of the deceased was found by the police after a report had been made to them.
4. In their evidence, the police officers testified that the accused implicated one Edwin. They confirmed that Edwin disappeared since the offence was committed.
5. The only other evidence is the inadmissible confession by PC Daisy Matuku (PW3).
6. After considering the evidence on record, the question is whether the prosecution has established a *prima facie case* against the accused person. In the **Black's Law Dictionary, 10th Edition** *prima facie case* is defined as follows:

***Prima facie case.* (1805) 1. The establishment of a legally required rebuttable presumption. 2. A party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor.**

7. The Court of appeal in the case of **Ramanlal Trambaklal Bhatt v. R** [1957] E.A 332 at 334 and 335, defined *prima facie case* as follows:

It may not be easy to define what is meant by a "prima facie case", but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.

8. Article 50 (2) (i) of the Constitution of Kenya provides:

(2) Every accused person has the right to a fair trial, which includes the right—

(i) to remain silent, and not to testify during the proceedings;

In the instant case, if the accused person opts to exercise his constitutional right hereinabove stated, I cannot enter a conviction based on the evidence on record. This therefore means that the prosecution has failed to establish a *prima facie case* against him. I accordingly acquit him of the offence of murder under section 306 (1) of the Criminal Procedure Code. He is set at liberty unless if otherwise lawfully held.

DELIVERED AND SIGNED AT HOMA BAY THIS 11TH DAY OF MAY, 2021

KIARIE WAWERU KIARIE

JUDGE