

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

CRIMINAL CASE NO. 16 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

DOUGLAS OWINO OCHIENG.....ACCUSED

RULING

1. Douglas Owino Ochieng 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 23rd day of April, 2018, at Kojwach location in Rachuonyo South Sub County of Homa Bay County, murdered Wycliffe Okido.
3. All the prosecution witnesses who testified did not witness the incident. Their evidence was inadmissible hearsay. This will therefore mean that the accused was charged on mere suspicion. The Court of Appeal in the case of **Sawe vs. Republic[2003] KLR 354**, the Court of Appeal held as follows:

Suspicion, however strong, cannot provide the basis of inferring guilt which must be proved by evidence beyond reasonable doubt.

4. After considering the evidence on record, the question is whether the prosecution has established a prima facie case against the accused. In the **Black's Law Dictionary, 10th Edition** prima facie case is defined as follows:

Prima facie case. (1805) I. 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.

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.

5. 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;

6. In the instant case, if the accused 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 22ND DAY OF JULY, 2021

KIARIE WAWERU KIARIE

JUDGE