

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CRIMINAL CASE NO. 8 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

PETER TRESI IKACHAI ALIAS VINCENT TRESI IKACHAI.....ACCUSED

RULING

1. **Peter Tresi Ikachai** alias **Vincent Tresi Ikachai** 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 1st day of March 2017, at **Nanderema** Sub-Location, **Akoret** Location of **Busia** County, murdered **John Onyapidi**.
3. The test as to whether the prosecution has established a prima facie case was prescribed by the court of appeal in the case of **Ramanla Trambaklal Bhatt vs. Republic (1957) E.A. 332** as follows:

It is 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.

In the instant case therefore, I will endeavour to find whether the evidence on record can be a basis for conviction if the accused opts to exercise his constitutional right as prescribed under Article 50 (2) (i) of the Constitution which states:

(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;

4. Vincent Okumu Oundo (PW1) testified that Semeyo Omsee informed him that the deceased was beaten by Shadrack Aunya and the accused. Semeyo Omsee did not testify because at the time of the hearing of the case he had passed away. His evidence was produced under section 147 of the Evidence Act. The gist of

this evidence was that the deceased picked a quarrel with John Okware with who they almost fought. Semeyo Omsee restrained them and ejected the duo together with the accused herein. The three went away and he did not know what transpired thereafter. The attempt to link the accused to the death of the deceased on the basis of the quarrel at the home of Omsee and the fact they left together lacks a logical basis. At best this amounts to suspicion. In the case of **Sawe vs. Republic [2003] KLR 354**, the Court of Appeal held inter alia:

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

In the instant case, I find the suspicion to be very weak and no guilt inference can be made from it.

5. There was no other evidence on record to connect the accused to the death of the deceased herein.
6. From the foregoing analysis of the evidence on record, I find that the prosecution has not established a prima facie case against the accused. He is not guilty of the offence of murder. I accordingly acquit him of the offence of murder under section 306(1) of the Criminal Procedure Code and set him free unless if otherwise lawfully held.

DELIVERED and SIGNED at BUSIA this 6th day of May 2019

KIARIE WWERU KIARIE

JUDGE