

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE (MURDER) NO. 68 OF 2013.

CORAM. OUGO J

REPUBLIC.....PROSECUTION

VERSUS

RICHARD ONGUTI OMBATI.....1ST ACCUSED

DEVIS MONGARE AYAKO.....2ND ACCUSED

RICHARD NYAEGA MOGAKA.....3RD ACCUSED

RULING

1. **Richard Onguti Ombati (1st Accused)**, **Devis Monagare Ayako (2nd Accused)** and **Richard Nyaega Mogaka (3rd Accused)** by an information dated the 6th June 2016 face a charge of murder contrary to section 203 as read with 204 of the Penal Code. The particulars of the offence are, “on the night of 3/4/2013 at Engorwa sub-location in Masaba South District Kisii County jointly with others not before court murdered Jane Ombati.

2. The accused persons denied the charge and the case was set down for hearing. The prosecution presented two witnesses in court on the 5th December 2018, PW1 Samuel Ombati and Mary Kwamboka. PW1 after identifying himself as the husband of the deceased, and identifying the accused persons as persons known to him stated that he was not going to testify until one person called Paul Nyamache is arrested and charged together with the accused persons. He declined to testify further and was stood down and was not recalled again. PW2 Mary Kwamboka identified the accused persons as known to her. She too indicated that Paulo was not in court and that she could not go on with the case. These two witnesses declined to testify and were stood down and were not recalled.

3. The prosecution were granted an adjournment and after two adjournments the prosecution closed its case on the 8.4.2019. The task this court has now is to determine if the prosecution has established a prima facie case to warrant the accused persons being put on their defence. A prima facie case is 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 defense (**see Ramanlala Trambaklal Bhatt vs. R [1957]EA 322 and Antony Njue Njeru vs. R Court of Appeal at Nairobi Criminal Appeal No. 77 of 2006.**

4. The only evidence tendered which was not even subjected to cross examination is that PW1 and PW2 knew the accused persons. There was no evidence led on whether they committed the murder as alleged. There is therefore no evidence led that would warrant the accused persons being put on their defence as the prosecution has failed to establish a prima facie case against any of the accused persons. Each accused person has no case to answer. This court therefore acquits **Richard Onguti Ombati (1st Accused)**, **Devis Monagare Ayako (2nd Accused)** and **Richard Nyaega Mogaka (3rd Accused)**. Each is at liberty to go unless lawfully held. Any surety held to be released to each depositor.

Dated signed and delivered at Kisii on the 2nd day of May 2019

R.E.OUGO

JUDGE

In the presence of;

Mr. Kaburi For the 1st Accused & 2nd Accused

Mr. Kimaiyo For the 3rd Accused

Mr. Otieno Senior Prosecution Counsel Office of the DPP

Rael Court Clerk