



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUSIA**

**CRIMINAL CASE NO. 13 OF 2016**

**REPUBLIC..... PROSECUTOR**

**VERSUS**

**DENNIS DERRICK ODUKE.....ACCUSED**

**RULING**

1. **Dennis Derrick Oduke** 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 14<sup>th</sup> day of April 2016, at **Sigalame** sub location in **Samia** Sub-county of **Busia** County, murdered **Leonard Kevin Murunga**.

3. The prosecution case was that the deceased was found in a bush while half naked and had injuries. He was taken to hospital but later succumbed to the injuries.

4. After the close of the prosecution case, the only issue for determination is whether a *prima facie* case has been established against the accused. The Court of Appeal in the case of **Ramanlal Trambaklal Bhatt vs. Republic (1957) E.A. 332 at 335**, defined a *prima facie* case in the following terms:

**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.**

This is what is going to guide me in this case in finding whether the prosecution has established a case for the accused to be called upon to tender his defence.

5. The prosecution tendered two versions which were attributed to the deceased. According to the evidence of Micah Maji Maji (PW1) and who is the area assistant chief, when he visited the deceased in hospital, he told him that he sustained the injuries that led to his hospitalization after falling with a motor cycle. However, according to the evidence of Beatrice Ajianbo Muruka (PW5), the deceased told the doctor in her presence that he was beaten by the accused, Ajoo and Bonnie. There was no explanation by the prosecution as to why they believed the second version and not the first. There was no other evidence that connected the accused to the offence he was charged with.

6. From the foregoing analysis of evidence on record, I find that the prosecution has failed to establish a *prima facie* case against the accused. 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 he is otherwise lawfully held.

**DELIVERED and SIGNED at BUSIA this 14<sup>th</sup> day of June, 2019**

**KIARIE WAWERU KIARIE**

**JUDGE**