



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**HCCRC NO. 18 OF 2018**

**PROSECUTOR .....REPUBLIC**

**VERSUS**

**DENNIS OCHIENG JOHN .....ACCUSED**

**RULING**

The accused was charged with the offence of **Murder** Contrary to **Section 203** as read with **Section 204** of the **Penal Code**.

1. It was alleged that the accused, **DENNIS OCHIENG JOHN**, murdered **MICHAEL OWINO ODONGO**, on 25<sup>th</sup> June 2018, at Kibos area.
2. The prosecution called three witnesses and then closed its case.
3. This Court is now called upon to determine whether or not the accused has a case to answer.
4. The accused has given a very comprehensive analysis of both the applicable law and the evidence.
5. At this stage of the trial, I have consciously decided that I would refrain from an indepth evaluation of the evidence. However, I have given due consideration to submissions made by both the accused and the prosecution.
6. First, there is evidence that proved that Michael Owino Odongo is dead. The Post Mortem Report was adduced in evidence, with the concurrence of the accused.
7. As the accused stated in his submissions, the burden of proof is upon the prosecution, to show that the deceased met his death as a result of an unlawful act or omission which was attributable to the accused person.
8. The accused has submitted that the prosecution had the duty to prove, beyond reasonable doubt, that it is the accused who committed the offence.
9. Whereas the standard of proof cited by the accused person is accurate, I find that it is not applicable at this stage of the trial.
10. The law stipulates that an accused person may not be convicted unless the prosecution led sufficient evidence to prove beyond reasonable doubt that the said person had committed the offence.
11. However, at the stage when the court is called upon to determine whether or not the accused person ought to be put on his defence, the court should be guided with the requirement that the prosecution had (or had not) proved a prima facie case against the accused.
12. As the accused herein noted, from the case of **REPUBLIC Vs ALEX MWANZI MUTANGILI, HCCRC NO. 18 OF 2015** (at Kajiado);

**“In making a finding on a prima facie case, one should bear in mind the cardinal principle on the burden of proof, that is the duty of the prosecution to establish the guilt of the accused for the offence charged beyond reasonable doubt.”**

13. If the trial court came to the conclusion that the prosecution had established a prima facie case against the accused person, the court ought

to place the accused to his defence.

14. At the close of the prosecution case, the accused should only be called upon to defend himself if the evidence already adduced could lead to his conviction, unless he offered a plausible explanation to rebut such evidence.

15. In effect, the evidence on record, upon which the court relies when putting the accused person to his defence should not be worthless discredited evidence.

16. Secondly, the evidence ought to be sufficient, on a prima facie basis, to prove all the ingredients of the offence.

17. It is only when the evidence was credible, cogent and reliable that it could establish a prima facie case.

18. In this case, the accused submitted that the evidence tendered by the prosecution, had a lot of gaps, so that it would be unfair to put him on his defence.

19. Having given due consideration to the evidence, I find that the first essential ingredient of the offence of Murder was established. The victim is dead.

20. The evidence placed the accused at the scene of crime, and indeed within the house where the victim emerged from, whilst bearing a fatal injury.

21. Although none of the prosecution witnesses saw the accused inflicting the injury upon the victim, there appears to be evidence of a Dying Declaration, which attributes the injuries to the actions of the accused.

22. In the circumstances, I find that the prosecution has established a prima facie case against the accused, considering that the said evidence could lead to the conviction of the accused, if the defence did not offer a reasonable explanation.

23. Accordingly, I find that the accused has a case to answer, and he is therefore put to his Defence.

**DATED, SIGNED and DELIVERED at KISUMU This 5<sup>th</sup> day of December 2019**

**FRED A. OCHIENG**

**JUDGE**