

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CRIMINAL CASE NO. 16 OF 2017

REPUBLIC..... PROSECUTOR

VERSUS

ISAAC ORAMISIACCUSED

RULING

1. **Isaac Oramisi** 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 night of 25th day of July, 2017 at **Chemasiri** location in **Busia** County, murdered **Diana Amucheri**.
3. At the close of the prosecution case, I was urged to find that the prosecution had failed to establish a prima facie case against the accused person. The Court of Appeal in the case of **Ramanlal Trambaklal Bhatt vs. Republic (1957) E.A. 332 at 335** defined a 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.

In the instant case, this is what I will endeavour to find if the prosecution established.

4. The evidence that connected the accused to the murder was twofold. One, was the fact that he was the last to communicate with the deceased and two, was that the deceased was expecting his child.
5. In the evidence of Lawrence Ipomai (PW1) was that they found the telephone number of the accused to have communicated with the deceased. This evidence however, did not indicate whether this was the last communication she had or was part of the people she had communicated with on that day. Communicating with a deceased person *per se* does not necessarily make one a killer. Evidence must be adduced to show that that communication was linked to the death and linked the accused person to the offence of murder. In the instant case, there was no evidence to show how this communication was relevant to the murder of the deceased, if any.
6. Prisca Akadikor Ochoo (PW1) is the mother of the accused. She testified that the deceased was expectant and it was alleged that the accused was the father of the child. On 21st April 2017 she had been escorted to her home due to the pregnancy. She stayed there for three days before her brother went and took her away.
7. It would appear that these two reasons were the basis of the suspicion against the accused. Suspicion however strong unless it is buttressed by some other evidence on record, is worthless. The court of Appeal in the case of **Sawe vs. Republic [2003] KLR 354** held:

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

8. In the instant case If the accused person opts to exercise his Constitutional right to remain silent, as provided for under Article 50 (2) (i) of the Constitution, no reasonable tribunal can convict from the evidence on record. This therefore, means that no prima facie case has been established against him. I accordingly acquit him under section 306 (1) of the Criminal Procedure Code and set him free unless if otherwise lawfully held.

DELIVERED and SIGNED at BUSIA this 11th day of December, 2019

KIARIE WAWERU KIARIE

JUDGE