

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

HIGH COURT CRIMINAL CASE NO 64 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

SAMUEL OTIENO FRANCIS.....ACCUSED

RULING

1. The accused **SAMUEL OTIENO FRANCIS** was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code the particulars of which were that on 23rd April, 2014 at Kayaba slums in Industrial Area within Nairobi County murdered **BONIFACE OMWAWA MUTULA**.

2. He pleaded not guilty to the said charges and to prove its case against the same the prosecution called a trial of seven (7) witnesses. At the close of the prosecution case it was submitted by the prosecution that a prima facie case had been made against the accused person so that even if the accused was to opt to remain silent during his defence the Honourable court would safely convict him based on the evidence on record.

3. On behalf of the defence it was submitted that there was no evidence to corroborate the evidence of PW4 who was the sole eye witness and further that the prosecution failed to call as witnesses very vital witnesses including one FRED who was with the deceased at the scene and one GABRIEL OBWONGA who first made a report to the police.

4. At this stage, the issue is not whether or not the prosecution has established a case against the accused person beyond reasonable doubt but whether a case has been made to justify calling upon the accused person to offer an explanation as was stated in the case of **REPUBLIC v JAGJIVAN M. PATEL & Others (1) TLR** as follows:-

“All the court has to decide at the close of the evidence in support of the charge is whether a case is made out against the accused just sufficiently to require him to make a defence, it may be a strong case or a weak case. The court is not required at this stage to apply its mind in deciding finally whether the evidence is worthy of credit or whether if believed it is weighty enough to prove the case conclusively beyond reasonable doubt. A ruling that there is a case to answer would be justified in my opinion in a border line case where the court, though not satisfied as to the conclusiveness of the prosecution evidence, is yet of the opinion that the case made out is one which on full consideration might possibly be thought sufficient to sustain a conviction.”

5. I have worked at the evidence on record and in particular the evidence of PW4, PW5 and PW6 and without saying much thereon at this stage so as not to prejudice the defence the accused might wish to offer and find and hold that the prosecution has established a prima facie case to enable me put the accused on his defence which I hereby do. The accused is therefore advised of his right under Section 306 of Criminal Procedure Code.

DATED, SIGNED and DELIVERED at Nairobi this 1st day of February, 2018

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Meroka for the State

Mr. Muchiri for Mr. Wachira for the accused

Accused present

Court clerk Tabitha/Karwitha