



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL CASE NO. 31 OF 2012

REPUBLIC APPELLANT

VERSUS

ISAAC ONDOGO OWINO RESPONDENT

RULING

ISAAC ONDOGO OWINO is charged with the offence of Murder, contrary to *Section 203* as read with *Section 204* of the *Penal Code*.

The particulars of this offence are that on the 25th day of April 2012 at Kambi Teso village, Kamukunji location, in Eldoret West District, within Rift Valley province, the accused murdered *Apollo Owino Odindo*.

The prosecution called three (3) witnesses and their case is that the deceased in this case was the father to the accused person and PW3 was his wife.

On 25th April, 2012 at about 6.00 p.m PW-2 left his place of work and headed home. On the way he passed by the home of the deceased. He found the deceased and the two discussed politics for a while. As they were talking, the accused arrived, greeted them and went on to the house. PW-2 and deceased had planned to go out and drink chang'aa later in the evening. The deceased followed the accused saying he was hopeful the accused will give him money for use in their outing. PW-2 remained at the gate. After about 5 minutes PW-2 shouted at the deceased telling him to find him later at a certain chang'aa drinking den. PW-2 went to the chang'aa drinking den. He was there for about an hour and the deceased never showed up. He later went home. While there at about 9.00 p.m he heard people knocking on his door. He opened the door. A person called *Etambo* hit him on the face with a stone. He was in company of *Kales* and *Willie* who all pounced on him, beating him. The accused was also present, but was standing nearby at a gate. When neighbours asked the assailants why they were beating PW-2, the accused responded by asking them whether they knew what he (PW-2) had done to the deceased. They led him to the deceased's home.

PW-1 the village elder was at Kamukunji market at 8.00 p.m, on 25th April, 2012. He received a telephone call from *Raphael Omwa* informing him that in the village there was a person who had been stabbed with a knife.

He went to the scene and before he arrived heard noises emanating from the place. He stood on the road and saw the accused and PW-2 in a group of some other people. He asked them what was happening. The accused responded saying *Chenjo* (PW-2) had killed the deceased. They all went to the house of the deceased. The deceased was lying on his back and had an injury on his head and a knife that was stuck on his abdomen. He had been stabbed with a kitchen knife. PW-1 called the O.C.S Eldoret police station and reported the incident. The police got to the scene. They arrested the accused and PW-2 as suspects. However, accused's sister called *Diana* got to the scene and alleged it's the accused who had killed their father and not PW-2. An accused's elder brother called *Daddy* also got to the scene. He asked the accused why he had caused the beating of PW-2 knowing very well he's the one who had killed their father. The accused had a jacket which he had worn inside out. *Daddy* insisted he opens up the jacket. He did and it was blood stained. The accused had also a cut in the right hand. Both suspects were taken to Baharini Police station. *Diana* went there and told police PW-2 was not a suspect and he was released. The jacket and the kitchen knife were kept as exhibits.

On 2nd May, 2012 PW-3 was called at Moi Teaching and Referral Hospital to identify the body for post mortem. She did so and the post mortem was conducted. At this point the prosecution were not able to call other witnesses on 25th June, 2018 of which was the hearing date, and closed their case.

This court must at this juncture determine as to whether a prima facie case is established against the accused person so as to warrant him be placed on

his defence.

In the prosecution case there is no evidence that anyone saw the accused killing his father, the deceased in this case. Those who alleged he is the one who killed his father, *Diana* and *Daddy*, who are accused's sister and brother respectively, were not called as witnesses. PW-2 never saw the accused with his father, and the accused together with his friends blamed him (PW-2) for killing him. PW-2 was held as a suspect initially in the case. His evidence in absence of corroboration from any other reliable witness, is suspect. The cause of death to the deceased was not revealed as the post mortem report was not produced as an exhibit. The doctor who conducted it was also not called as a witness. As such there's no reliable evidence that it is the accused who murdered his father, which would warrant him be placed on his defence. I do therefore, hereby, acquit him of the offence under *Section 210* of the *Criminal Procedure Code*.

S. M GITHINJI

JUDGE

DATED, SIGNED and DELIVERED at **ELDORET** this 12th day of July 2018.

In the presence of:-

- (1) Mr. Okara holding brief for Mr. Marube Advocate for the accused
- (2) Ms. Kegehi - State prosecutor
- (3) Mr. Mwelem- Court clerk