



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAKURU

CRIMINAL CASE (MURDER) NO. 2 OF 2017

REPUBLIC.....PROSECUTOR

-VERSUS-

PETER OMARIBA OTEKI.....ACCUSED

RULING

The appellant Peter Omariba Oteki was charged with the offence of murder, contrary to Section 203 as read with Section 204 of the Penal Code.

The particulars of the offence are that on the 3rd January 2017 at Gichea Bridge Rongai River within Nakuru County he murdered James Stephen Obuya Bwana.

He was arraigned in court on the 6th February 2017 when he pleaded not guilty to the offence.

The prosecution called only one witness who testified on the 5th October 2017. Since then, no other witnesses were procured to attend court by the prosecution despite numerous opportunities granted. On the 1st October 2019, non availability of witnesses forced the prosecution to close its case.

PW1 was Faith Wairimu, a business woman. Her evidence was that prior to the alleged murder, she did not know the accused person, and that the deceased was her husband. On the 31st December 2016, she testified that her husband left their home for his work place at Kilgoris where he arrived safely.

However, two days later, she was informed that her husband, a prison officer was found dead. She travelled to Kilgoris where she identified the deceased as her husband. She testified that she did not know who killed the deceased.

It is upon the above evidence that I am to make a finding whether a *prima facie* case has been made out to necessitate the accused person to be called to answer to the charge of **Murder Section 306 of the Criminal Code it states:**

306 (1) When the evidence of the witnesses for the prosecution has been concluded, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence shall after hearing if necessary any arguments which the advocate for the prosecution or the defence may desire to submit record a finding of not guilty.

It is trite that the prosecution must call sufficient and credible evidence enough to require the accused to be put on his defence – **Bhatt –vs- Republic (1957) EA 332.**

The evidence of the only one witness **PW1** does not point to the accused as having committed the offence. Indeed **PW1**, wife of the deceased testified that she did not know who may have killed the deceased, and her only role was to identify the body of the deceased.

The prosecution fell short of availing necessary witnesses to prove the charge against the accused.

I find no evidence upon which I may place the accused on his defence. **He is acquitted under Section 306 (1) of the Criminal Procedure Code** and set at liberty unless otherwise lawfully held.

Delivered, Signed and Dated at Nakuru this 7th Day November 2019.

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J. N. MULWA

JUDGE