

REPUBLIC OF KENYA

IN HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO. 16 OF 2015

REPUBLICPROSECUTION

-versus-

KEPHA NYAGWENCHA OYAGI.....ACCUSED

RULING

1. Kepha Nyagwencha Oyagi hereinafter referred to as the accused is 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 13th April 2015 at Nyamagesa Location in Masaba South- Sub County within Kisii County, jointly with others not before the court murdered Josephat Magutu.
2. The accused pleaded not guilty and the matter proceeded to hearing. The prosecution called 2 witnesses. Pw1 Kennedy Oira testified that the deceased was his brother. On the 14/3/2013 he identified the body for post mortem. Pw2 was Doctor Joel Matiangai he carried out the post mortem on the 14/4/2015 at Gucha Nursing Home-Keroka. After the post mortem he concluded that the cause of death was cardio-respiratory failure secondary to severe head injury following a blunt force trauma to the head. He produced the post mortem report.
3. The prosecution failed to call any other witnesses after the 2 witnesses testified. The prosecution closed their case. At the close of the prosecution case this court is to make a determination if the accused has a case to answer to warrant him being put on his defence. Upon evaluating the evidence it has been established that Josephat Magutu died on the 12th April 2012. There was evidence adduced is that his body was identified and a post mortem done and the cause of death indicated. There was however no evidence adduced on how the deceased met his death and whether the accused was involved. In the case of **R. vs. Wachira [1975] E.A 262**, it was held that if a prima facie case is not established at the close of the prosecution case then the court must acquit the accused person. I find that the evidence adduced is insufficient to put the accused on his defence. The prosecution have failed to establish a prima facie against Kepha Nyagwencha Oyagi. He is acquitted of the charge of murder and is free to go unless lawfully held.

Dated and delivered at Kisii on the 11th day of December 2018.

R.E OUGO

JUDGE

In the presence of;

Accused Present

Mr. Otieno Senior Prosecution Counsel

Ms. Rael Court Clerk