



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO. 24 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

JAIRUS MOGIRE OBONDI alias TANDI.....ACCUSED

RULING ON A CASE TO ANSWER

1. JAIRUS MOGIRE OBONDI alias TANDI faced a charge of murder contrary to **Section 203** as read with **Section 204** of the Penal Code. It was alleged that on 1st March 2013 at Nyabitunwa Location in Kenyena District within Kisii County, murdered **DORIS NYANCHOKA MOCHAMA**.

2. The prosecution is expected to establish a prima facie case against the accused before the court can put him on his defence. The standard of proof of prima facie case was laid down in the celebrated case of **Ramanlal Trambaklal Bhatt vs Republic [1957] E.A. 322** as follows:

“(i) The onus is on the prosecution to prove its case beyond reasonable doubt and a prima facie case is not made out if at the close of the prosecution, the case is merely one on which on full consideration might possible be thought sufficient to sustain a conviction.

(ii) The question whether there is a case to answer cannot depend only on whether there is some evidence irrespective of its credibility or weight sufficient to put the accused on his defence. A mere scintilla of evidence can never be enough; nor can any amount of worthless discredited evidence.”

3. In the instant case, the prosecution called a total of 5 witnesses in their case whose evidence was briefly as follows:

4. PW1 GRACE NYANDUKO testified that on 1st March 2013 she found the deceased who had been stabbed with a knife, lying dead on the ground. She stated that she did not witness anyone killing the deceased.

5. PW2 LINET MORAA MOCHAMA testified that she identified the body of the deceased, who was her mother, during the post mortem examination which was conducted at Nyamache Hospital mortuary.

6. PW3 DAVID OKINYI was the medical doctor who conducted the post mortem examination on the body of the deceased and established the cause of death to be cardio respiratory arrest secondary to stab wounds.

7. PW4 EDWARD OSIEMO MOCHAMA testified that the accused killed the deceased who was his

mother over a Kshs. 40/= alcohol debt. He stated that he witnessed the accused stab his mother with a knife as she was trying to prevent the accused from stabbing him (PW4).

8. PW5 PAUL OCHIENG OWALO was the Police Officer who investigated the case.

9. In view of the above, I find that the prosecution has established a prima facie case against the accused to warrant me to put him on his defence. He is accordingly placed on his defence.

10. Under the provisions of Section 306 (2) of the Criminal Procedure Code, this court hereby informs the accused person of his right to inform this court how he wishes to give his evidence, whether by taking oath or without taking oath. The accused person has also been informed of his right to call witnesses in his defence and to inform this court how many witnesses he wishes to call.

Delivered, dated and signed in at Kisii on **6th of March**, 2017.

W.A. OKWANY

JUDGE

In the presence of:

- Miss Mbelete for the State
- Mr. Nyagwencha for the Accused
- Omwoyo court clerk