



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KAKAMEGA.

CRIMINAL CASE NO. 2 OF 2010.

REPUBLIC.....PROSECUTOR.

VERSUS

SAMUEL OMULANDA.....ACCUSED.

R U L I N G.

1. The accused person, Samuel Omulanda was on 9th March, 2010 arraigned in court to answer to the charge of murder contrary to section 203 as read with 204 of the Penal Code. The particulars of the charge being that on the 25th day of December, 2009 at Eluyaka village, Ebushiloli sub-location, North East Bunyole location, in Emuhaya District central District within Western province, murdered Philip Ondego Okonga.

2. The prosecution called six (6) witnesses before it closed its case on 2nd November, 2015. This court heard the evidence of PW6 as the case was a part-heard. The court's duty now is to consider the evidence tendered by the prosecution and determine if the accused has a case to answer.

3. In the case of **R. VS. Jaggivan M. Patel and others (1) T.L.R. (R) 85** the court stated thus:-

“..... 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 his defence. It may be a strong case or it may be 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 it is 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.”

4. In the present case, the evidence of PW1, Elijah Kulundu Okanga, was to the effect that he was at home on 26th December, 2006 at 6.00 a.m. when the accused person went to his house and told him that PW1's brother had been beaten and cut up by people and had fallen at the accused person's home at 7 p.m., (on 25th December, 2006). PW1 went to the scene in the company of PW2 and others. At the scene, PW1 saw a trail of blood from the accused person's house to where the deceased's body lay. PW1 saw injuries on the hands and cuts on the deceased's head.

5. PW1 and the others who were at the scene went to call the Chief who on arrival at the scene forced the accused person to open the door to his house. The accused person opened the back door and on entering

the house, PW1 saw that the whole house was full of blood.

6. PW2, Peter Donald Kulundu, corroborated the evidence of PW1 in all material particulars.

7. PW3, James Okanga Opanga, adduced evidence that the accused person went to his house on 26th December, 2009 at 8.00 a.m. and told him that the deceased had gone to his home while injured. He visited the scene and saw injuries on the deceased's head. The accused person opened the back door of his house and on entry, PW3 saw blood everywhere. PW3 told PW1, PW2 and the accused person to go to the Chief to make a report.

8. PW4, Alex Olwanga Okanga, testified that on 25th December, 2009 at 6.00 p.m., the accused person's wife, Jerida, went to PW4 and asked him to accompany her to see her husband, the accused person, and the deceased fighting. On the way there, PW4 met the accused person who was armed with a panga. He tried to cut PW4 with the panga but PW4 hit the accused person and he fled. As he was walking, PW4 looked back near his house and saw the accused person and his wife walking home.

9. The following day (26th December, 2009), PW4 was informed that the deceased had died at the accused person's home. He went to the scene but stood at a distance from the body.

10. PW5, Dr. Jairus Amunga, produced the post mortem report, Exhibit 1, on behalf of the Doctor who conducted the post mortem. The cause of death was established to be as a result of severe head injury.

11. PW6, Samuel Ndungu Nguni, adduced evidence that on 26th December, 2009, he was called by the Eluyaka area Sub-chief and informed about a murder that had occurred. He proceeded to the scene and found the deceased lying along a path outside the compound of the accused person. The deceased had deep cuts on his body. PW6 recovered a bloodstained panga from the accused person's house which PW6 produced as exhibit 2. PW6 took the deceased's body to Mbale District hospital.

12. PW6 stated that investigations revealed that the accused person's wife was the deceased's woman friend thus the reason why the accused person attacked the deceased. PW6 testified that there was blood in the accused person's house.

13. PW6 indicated that the accused person's wife disappeared through the back door. PW6 re-arrested the accused person after which he was arraigned in court for the offence of murder.

14. After carefully considering the foregoing evidence, I am satisfied that a prima facie case has been established to put the accused person on his defence in accordance with the provisions of section 306 (2) of the Criminal Procedure Code.

DELIVERED, DATED and SIGNED in open court at **KAKAMEGA** this **8TH** day of **FEBRUARY**, 2016.

NJOKI MWANGI

JUDGE.