



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**CRIMINAL CASE NO. 25 OF 2010**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**DOMINIC MURINGE NYAUNDI.....ACCUSED**

**RULING ON A CASE TO ANSWER**

1. The accused person herein DOMINIC MURINGE NYAUNDI is charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the charge are that on 14<sup>th</sup> March 2010 along Enoretet – Enoosaen Road in Transmara District jointly with others not before the court murdered **CHARLES OUMA OBAJE**.

2. The standard of proof on whether or not the prosecution has established a prima facie case was laid down in the case of Ramanlal Trambaklal Bhatt- vs Republic (1957) E.A. 332 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 7 witnesses out of which I heard the last 3 witnesses.

4. I have however perused the typed proceedings of witnesses who testified before my predecessor in the case, Justice Wakiaga and noted their testimonies which I will summarise as follows:

5. **PW1 DANIEL OLE MOI LARUPA** testified that on the night of 14<sup>th</sup> February 2012, the deceased, who was a motor cycle rider, carried him and a person he recognized as the accused on his motor bike only for him to alight from the said motor bike upon reaching his destination whereupon he parted ways with the deceased. No sooner had PW1 settled down for the night than 10 minutes later he had screams from the direction where he had left the deceased. PW1 went to the scene of the commotion where he found that the deceased, who died later on, had been attacked and had cut wounds on his head and hands. PW1 testified that they embarked on tracing the accused, whom he had suspected to be the deceased’s assailant and that when they found the accused at the house where he lived, he had blood on his face, he had changed his clothes and had a panga which appeared to have just been washed.

**6. PW2 DAVID LEKUMOK MWANGA** a business man in Transmara also stated that he heard screams on the material night and on rushing to the scene of the incident, the deceased who was still alive informed him that he had been attacked by one of his passengers. On going to the home of the accused who was suspected to have been the assailant, PW2 found him and he had blood on his face, a wet panga and clothes soaked in a basin under the bed. PW2 stated that he knew the accused as the son of one Samson.

**7. PW3 PAUL K. MURUNGA** also went to the scene of the attack after which they proceeded to the home of the accused who was suspected to have been the deceased's attacker. He also stated that the accused had blood on his face, a washed/wet panga and clothes that were soaked in a basin.

**8. PW4 JULIUS NTOIKA** was the accused's landlord. He confirmed that the accused was arrested on the material night on allegations that he had attacked someone.

**9. PW5, DR. PETER OGOLA** was the doctor who performed the post mortem examination on the body of the deceased and established the cause of death to be severe hemorrhage resulting from multiple lacerations due to assault.

**10. PW6 JOSEPH GITONGA MBAU** was the chemist at the Government Chemists who produced a report on analysis of exhibits submitted by the police for DNA analysis.

**11. PW7 NO. 62264 CPL. HENRY KILONZO** was the investigating officer.

12. From the above brief summary of the evidence tendered by the prosecution witnesses especially PW1, PW2 and PW3, I find that the prosecution has laid out a prima facie case to warrant the accused being put on his defence. Consequently, I hereby place the accused on his defence.

13. Defence hearing on 2/11/2016

Delivered, dated and signed in at Kisii on **6<sup>th</sup> of September, 2016.**

**W.A. OKWANY**

**JUDGE**

**In the presence of:**

- Mbelete for the State
- Sagwe for Moracha for the Accused
- Omwoyo court clerk