



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL CASE NO. 7 OF 2016

(CORAM: J. A. MAKAU – J.)

REPUBLIC

VERSUS

GEORGE ODHIAMBO OKAL

RULING

1. The accused **GEORGE ODHIAMBO AKAL OGALLO** faces a charge of **Murder contrary to Section 203 as read with Section 204, of the Penal Code (Cap 63) Laws of Kenya**. The particulars of the offence are that on the 19th day of March 2016 at Mahanga Beach, Mageta Location in Bondo sub-county, within Siaya County murdered **KENNEDY OTIENO OUGO**.
2. The prosecution called five (5) prosecution witnesses and closed its case. That upon close of the prosecution case by the State, the Defence Counsel did not submit on case to answer but left the matter to the court to make a ruling on whether a *prima facie* case has been made to warrant the accused being put on his defence.
3. The onus of proving whether the accused has a case to answer lies with the prosecution. The standard of proof as to whether the prosecution has established as *prima facie* case was laid down in the celebrated case of **Ramanlal Trambaklal Bhatt V Republic (1957) EA 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 which on full consideration might possibly be though 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.”

And in **R –VS- JAGJIVAN M. PATEL AND OTHERS 1, TLR, 85** the learned Judge said:

“All the court has to decide at the close of evidence of the charge is whether a case is made out against the accused just sufficiently to require him to make a 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 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

conclusiveness of the prosecution evidence, is yet of opinion that the case made out is one which on full consideration might possibly be thought sufficient to sustain a conclusion.”

4 The prosecution witness testified against the accused in this case. PW1, Peter Otieno Ododngo, PW2 Samuel Oyego Onam, PW3 Willice Obura eye witnesses in this case placed the accused at the scene of the incident and testified that they witnessed a confrontation between the deceased and the accused. They also saw the murder weapon that was used to inflict injuries to the deceased from which injuries he passed on. PW4 Dr. Evans Ogiti a Doctor attached to Bondo Sub-County Hospital, prepared postmortem Report, on the deceased Kennedy Otieno Ougo, which was filled by Doctor Collins Oginga, who performed the postmortem on the body of the deceased. He formed the opinion as a result of examination of the body, the cause of death was penetrating injury of the chest injuring the left lung with massive, left sided haemothorax with resultant respiratory failure, most probably from sharp object such as a knife. PW5 the investigating officer received the accused from members of public on the allegation of having stabbed the deceased to death. He re-arrested the accused and proceed to the scene of crime where the deceased body was lying with a fresh wound. He also found a knife, a few metres from the deceased and picked the blood stained knife which was produced as exhibit P2. He later took the deceased body to Bondo Sub-District Hospital Mortuary and the accused to Usenge Police Station. PW5 recorded statements from the witnesses.

5. I have very carefully considered the prosecution witnesses evidence. It is evidence of eye witnesses, which placed the accused, at the scene of incident, the murder weapon was recovered next to the deceased body which had a fresh wound to the chest. The Postmortem Report confirm the cause of death was due to penetrating injury of chest involving the left lung with massive left sided haemathorax with resultant respiratory failure probably from sharp object such as a knife.

6. From the evidence on record I find that the prosecution has made out a case against the accused just sufficient to require him to make a defence. The prosecution case may be strong or weak but at this stage the court is not required to decide finally whether the evidence is worthy of credit or whether, if believed, is weighty enough to prove the case conclusively, beyond any reasonable doubt. The ruling on case to answer is in my opinion justified in a borderline case, here the court though may be not satisfied as to the circumstances of the prosecution evidence, is yet of the opinion that the evidence produced on full consideration might possibly be thought sufficient to sustain a conviction.

7. The upshot is that I find the prosecution has established a *prima facie* case against the accused to warrant him being put on his defence. The accused is accordingly placed on his defence.

DATED AND SIGNED AT SIAYA this 6TH DAY OF OCTOBER, 2016.

J. A. MAKAU

JUDGE

DELIVERED IN OPEN COURT

IN THE PRESENCE OF:

MR. R. OTIENO FOR THE ACCUSED

M/S. ODUMBA FOR STATE

C.C. K. ODHIAMBO

L. ATIKA

J. A. MAKAU

JUDGE