



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU

CRIMINAL APPEAL NO. 23 OF 2015

(CORAM: J.A. MAKAU – J.)

CHARLES OWADE OTIENOAPPELLANT

VERSUS

REPUBLIC RESPONDENT

RULING

1. The accused **CHARLES OWADE OTIENO** is charged with an 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 7th day of August 2014 at Nyagoko Sub-Location, Rarieda Sub-County, within Siaya County, the accused murdered one **PETER OYOLO GIRO**.

2. The Prosecution called six (6) prosecution witnesses and concluded their case upon which Mr. Adiso Learned Advocate for the accused submitted that the accused has no case to answer, whereas M/s. Odumba Learned State Counsel for the prosecution submitted the prosecution has made case against the accused for which he should be placed on his defence.

3. The standard of proof as to whether the prosecution has established a *prima facie* case has been laid down in myriads of cases. In the case of **R V Jagjivan M. Patel & Another 1 TLR 85** it was held thus:

“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 evidence of PW1 and PW3 is evidence of eye witnesses. They heard the accused call the deceased, they found him, heard him quarrelling with the deceased and later witnessed the accused taking the deceased to his house carrying him. PW1 then called the deceased but he could not respond but later heard him groaning. That at around 3.00 a.m. – 4 a.m., PW1 found the deceased had vomited and was dead. PW1 and PW3 placed the accused at the scene of the incident. The deceased was last seen with the accused before his death. The postmortem Report exhibit P1 stated the cause of death was massive blood haemothorax secondary to blunt trauma.

5. In view of the evidence of PW1 and PW3 as well as the evidence of PW6, I find that the prosecution

has established a *prima facie* case against the accused to warrant me put him on his defence. I accordingly find the accused has a case to answer and I accordingly place him on his defence.

DATED AT SIAYA THIS 10TH DAY OF NOVEMBER 2016.

J. A. MAKAU

JUDGE

DELIVERED IN THE OPEN COURT

IN THE PRESENCE OF

M/S. ODUMBA FOR STATE

MR. ADISO FOR THE ACCUSED

C.A. 1. KEVIN ODHIAMBO

2. LEONIDA ATIKA

J. A. MAKAU

JUDGE