

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO. 38 OF 2006

[MURDER]

REPUBLIC PROSECUTOR

V E R S U S

SAMUEL MALOBA OBUYI ACCUSED

R U L I N G

1. The accused person herein Samuel Maloba Obuyi was charged alongside Lukas Obuyi Komba (now deceased) with the 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 26th day of May 2006 at Ebukame village, Ebusakami Sub-location South Bunyore Location in Vihiga District within Western Province jointly murdered **PATRICK TUTI***. The pair denied the charge.

2. The prosecution called 4 witnesses, among them **DR. JAIRUS AMUNGA** of Vihiga District Hospital who testified as PW4. He produced a post mortem report of the examination done on the body of the deceased by his senior colleague, Dr. Oyoko, Medical Officer of Health at Vihiga District Hospital in 2006. From the report, the deceased had a bruise on the left cheek and left region of the body below the ribs. The report also showed the deceased had suffered a ruptured spleen and there was blood in his abdomen. The doctor opined that the cause of death was cardio pulmonary arrest due to splenic rupture and bleeding in the abdomen.

3. I have now carefully considered the evidence given by the other 3 prosecution witnesses, namely **Leonida Okemo, PW1, Harun Tuti, PW2** and **Number 230152 SP Joseph Arasa** and I am satisfied that through the said evidence, the prosecution has established a prima facie case requiring the accused person to be placed on his defence. I accordingly place the accused on his defence pursuant to the provisions of **section 306 (2)** of the Criminal Procedure Code.

4. The accused may choose to give sworn evidence in which case he will be subjected to cross examination or give unsworn evidence if he does not wish to be cross-examined. Thirdly, the accused is at liberty to remain silent and let the court decide the case on the evidence that is before it. In each case, the accused person has the right to call witnesses.

5. I now call upon the accused person to indicate to the court which of the 3 options he wishes to adopt for his defence.

6. It is so ordered.

Ruling delivered, dated and signed in open court at Kakamega this 12th day of March 2015

RUTH N. SITATI

JUDGE

In the presence of

Mr. Oroni for State

Mr. Osango for Nandwa (present) for Accused

Mr. Juma (present) Court Assistant