

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO. 26 OF 2010

REPUBLIC PROSECUTOR

VERSUS

SILAS MMBO ACCUSED

RULING

Evidence for the prosecution was heard by another judge. The prosecution case was closed. When the case first came before me on 12/2/2012, both the defence and Prosecuting counsel asked that they be granted time to file submissions on a case to answer. The court gave such time.

However, after a number of mentions, on 12/2/2014, the respective counsel asked the court to consider the evidence and make a ruling whether the accused has a case to answer.

I have perused the evidence on record. The prosecution, by the close of its case, is required to establish a prima facie case. Such a case is one where, if the accused does not offer any defence, then the court could convict on the evidence on record.

In my view, the evidence herein establishes a prima facie case against the accused. The incident is alleged to have occurred in broad daylight. Two prosecution witnesses claimed to have witnessed the assault by the accused on the deceased. The deceased died shortly thereafter. A doctor testified on the cause of the death. I therefore find that a case to answer has been established.

Consequently, I put the accused on his defence under **Section 211** of the Criminal Procedure Code (Cap.75), subject to compliance with Section 200 of the Criminal Procedure Code.

Dated and delivered at Kakamega this 15th day of May, 2014

George Dulu

J U D G E