

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO. 11 OF 2009

REPUBLIC PROSECUTOR

V E R S U S

MAURICE BULASIO ODHIAMBO ACCUSED

R U L I N G

The accused person is charged 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 the accused *on the 17th day of February 2009 at Ebumatsi village, Ebuhando sub-location Wekhomo location in Emuhaya District within the Western Province murdered VICTOR OMWOMA.*

The prosecution called 8 witnesses. PW1 FRANCIS OKILLA and PW4 FREDRICK ALI OMWONA testified that on the 24.2.2009 they identified the deceased's body at Mbale District hospital for post mortem purposes. PW4 was the deceased's father. PW2 DR. MASIKA COLLINS produced the post mortem report on behalf of DR. LIMO KURGAT who performed the post mortem on the 24.2.2009. According to the post mortem report the deceased had several stab wounds and the cause of death was hemorrhagic shock due to excess hemorrhage from stab wounds.

CHARLES MAKALE ONYANGO was **PW3**. On the 18.2.2009 at about 8.00 a.m. he was heading to his farm and he saw the deceased's body on the road. The body had several wounds and he went to report to the village elder. On the 21.2.2009 he wrote his statement at Luanda police station. He did not know the deceased. **PW5 FRIDA ELIZABETH OLESI** got information about the deceased's death on the 18.2.2009 at about 7.30 a.m. from one **TOM MELIDE**. She went to the scene and saw the deceased's body that was bleeding from the chest. The police were called and they went to take the body.

PW6, AP SGT. HUDSON OMBIMA was based at the Emabungo AP camp in Emuhaya District. On the 18.2.2009 at about 8.00 a.m. he got information that someone had been killed on top of a hill at Emabungo area. He went to the scene in the company of APC Otieno and APC Njogu. They found the accused had been arrested as a suspect by members of the public. The body had stab wounds on the chest. Since the suspect was in great danger as members of the public wanted to kill him they took him to Luanda police station. They later went back to the scene and collected the body. They went to the suspect's house and recovered a mobile phone which the members of the public claimed to belong to the deceased. **PW7, PC MOHAMED ABDI FARA** was based at Vihiga police station. On the 17.2.2009 he was given an exhibit memo containing a padlock to take to Nairobi Government Chemist. The memo had the reference number of A110/2009. The padlock had blood stains. A report from the Government Chemist was later sent to the station.

PW8, CI ALBERT TAWAYA was the head of the CID office at Vihiga in 2009. On the 18.2.2009 he got information about the murder and he instructed the OCS by the name **SALIM MWAVUYA** to go and take the body. The APs had arrested a suspect by the name **MAURICE ODHIAMBO** with a blood stained padlock. The suspect was sent to the Vihiga police station on the 27.2.2009. The blood stained padlock was taken to the Government Chemist in Nairobi for examination. According to PW8 it the blood stained padlock that connected the accused to the offence.

From evidence on record it is established that the deceased died of stab wounds that inflicted on him on 18.2.2009. The deceased's body was seen by PW3 in the morning of 18.2.2009. It is the evidence of PW6 that the accused was arrested as a suspect. Two items were alleged to connect the

accused to the offence. There is a mobile phone which is alleged to have belonged to the deceased and it was recovered in the accused's house, however the same was not produced in court. The circumstances of its recovery are also not clear. It is not clear from the evidence of PW6 that when the mobile phone was recovered the accused was with them. It is also clear that it is members of the public who alleged that the mobile phone belonged to the deceased. None of the members of public was called to testify. The next item is the blood stained padlock. The report from the Government Chemist was not produced. During cross-examination, PW8 confirmed that the post mortem report does not show that blood samples were taken from the deceased's body. Further, the P3 form for the accused does also not indicate that blood samples were taken from him. It is therefore not clear whether any meaningful investigations were done. The padlock and the mobile phone were not produced. Those who suspected the accused to have committed the offence did not testify. It is not clear how the accused was connected with the offence. The village elder to whom PW3 reported the matter did not also testify to shed light on how the accused was arrested.

In the end, I do find that the prosecution has not established a prima facie case to warrant placing the accused on his defence. The accused is hereby set at liberty unless otherwise lawfully held.

Delivered, dated and signed at Kakamega this 9th day of October 2013

SAID J. CHITEMBWE

J U D G E