



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**

**CRIMINAL CASE NO. 43 OF 2008**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**FRANCIS FAYA OCHIENG ..... ACCUSED**

**RULING**

The accused Francis Faya Ochieng alias Odede is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.

Particulars of the charge are that on the 29th November, 2008 at Kipkaren Estate Uasin Gishu District of the Rift Valley Province murdered Milka Musyoka.

The prosecution's case was heard by the then Azangalala, J. A total of thirteen (13) prosecution's witnesses testified. Both the defence and the prosecution have filed written submissions on whether the accused has case to answer.

The standard of proof as to whether the prosecution has established a prima facie case was laid down in the celebrated case of **RAMANLAL TRAMBAKLAL BHATT -VS- REPUBLIC (1957) E.A. 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 thought 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."**

In the instant case PW1 and PW4 testified as eye witnesses. PW1 testified of the unfolding events on the material date, stating that it is the accused who cut the deceased with a panga. Her testimony was corroborated by PW4 who being a minor and after voire dire examination, gave unsworn statement of evidence.

PW2 also said that she knew the accused cut the deceased with a panga as he had suspected that he (deceased) and PW2 had stolen his phone and cash Ksh. 4,000/=.

The evidence of PW2 who is the medical officer who produced the P3 form is consistent with that of PW1, 2, 4 and 13, the latter being the investigating officer. He formed the opinion that deceased died of head injury due to assault.

Based on the above summary, I find that the prosecution has established a prima facie case against the accused whom I hereby rule that he has a case to answer.

**DATED and DELIVERED at ELDORET this 8<sup>th</sup> day of October, 2013.**

**G. W. NGENYE – MACHARIA**

**JUDGE**

**In the presence of:**

..... for the Accused

..... for the State